

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: JOSEPH SAVERI LAW FIRM
BY: JOSEPH SAVERI
JAMES G. DALLAL
255 CALIFORNIA STREET, SUITE 450
SAN FRANCISCO, CALIFORNIA 94111

LIEFF, CABRASER,
HEIMANN & BERNSTEIN
BY: KELLY M. DERMODY
BRENDAN P. GLACKIN
DEAN M. HARVEY
ANNE B. SHAVER
LISA J. CISNEROS
275 BATTERY STREET, 30TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONTINUED)2 FOR DEFENDANT
3 GOOGLE:KEKER & VAN NEST
BY: ROBERT A. VAN NEST
DANIEL E. PURCELL
633 BATTERY STREET
SAN FRANCISCO, CALIFORNIA 94111MAYER BROWN
BY: LEE H. RUBIN
TWO PALO ALTO SQUARE, SUITE 300
PALO ALTO, CALIFORNIA 943067 FOR DEFENDANT
8 APPLE:O'MELVENY & MYERS
BY: GEORGE A. RILEY
CHRISTINA J. BROWN
TWO EMBARCADERO CENTER
28TH FLOOR
SAN FRANCISCO, CALIFORNIA 9411111 FOR DEFENDANTS
12 ADOBE AND
INTUIT:JONES DAY
BY: DAVID C. KIERNAN
LIN W. KAHN
CRAIG E. STEWART
555 CALIFORNIA STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 9410414 FOR DEFENDANT
15 INTEL:MUNGER, TOLLES & OLSEN
BY: GREGORY P. STONE
355 SOUTH GRAND AVENUE, 35TH FLOOR
LOS ANGELES, CALIFORNIA 9007118 FOR DEFENDANT
19 PIXAR:COVINGTON & BURLING
BY: EMILY J. HENN
333 TWIN DOLPHIN DRIVE, SUITE 700
REDWOOD SHORES, CALIFORNIA 94065

1 SAN JOSE, CALIFORNIA

OCTOBER 21, 2013

2 P R O C E E D I N G S

3 (COURT CONVENED AT 1:57 P.M.)

4 THE CLERK: CALLING CASE NUMBER C-11-02509 LHK, IN
5 RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION.

6 COUNSEL, STATE YOUR APPEARANCES, PLEASE.

7 MR. SAVERI: GOOD AFTERNOON, YOUR HONOR.

8 JOSEPH SAVERI, JOSEPH SAVERI LAW FIRM ON BEHALF OF THE
9 PLAINTIFFS. I'M HERE WITH MY COLLEAGUE, JAMES DALLAL.

10 MS. DERMODY: GOOD AFTERNOON, YOUR HONOR.

11 KELLY DERMODY, LIEFF CABRASER FIRM. WITH ME ARE MY PARTNERS,
12 BRENDAN GLACKIN AND DEAN HARVEY, AND MY ASSOCIATES, ANNE SHAVER
13 AND LISA CISNEROS.

14 THE COURT: GOOD AFTERNOON.

15 MR. VAN NEST: GOOD AFTERNOON, YOUR HONOR.

16 BOB VAN NEST, KEKER & VAN NEST FOR GOOGLE. I'M HERE WITH MY
17 PARTNER, DAN PURCELL, AND I'VE BEEN ASKED TO SPEAK ON BEHALF OF
18 THE DEFENSE GROUP THIS AFTERNOON.

19 THE COURT: OKAY. GOOD AFTERNOON.

20 MR. STONE: GOOD AFTERNOON, YOUR HONOR.

21 GREGORY STONE OF MUNGER, TOLLES & OLSON ON BEHALF OF INTEL
22 CORPORATION.

23 THE COURT: OKAY. GOOD AFTERNOON.

24 MR. KIERNAN: GOOD AFTERNOON, YOUR HONOR.

25 DAVID KIERNAN, AND WITH ME IS LIN KAHN ON BEHALF OF ADOBE.

1 MR. RUBIN: GOOD AFTERNOON, YOUR HONOR. LEE RUBIN
2 FROM MAYER BROWN, HERE ALSO FOR GOOGLE.

3 THE COURT: OKAY. GOOD AFTERNOON.

4 MR. RUBIN: GOOD AFTERNOON.

5 MR. RILEY: GOOD AFTERNOON, YOUR HONOR. GEORGE RILEY
6 OF O'MELVENY & MYERS REPRESENTING APPLE. I'M JOINED BY MY
7 COLLEAGUE, CHRISTINA BROWN.

8 THE COURT: OKAY. GOOD AFTERNOON.

9 OKAY. SO WE HAVE A CMC TODAY, AND THEN WE ALSO HAVE THE
10 PRELIMINARY APPROVAL.

11 WERE YOU GOING TO SAY SOMETHING?

12 THE CLERK: THERE WAS SOMEONE ELSE STANDING UP.

13 THE COURT: OH, I'M SORRY.

14 MR. STEWART: YOUR HONOR, CRAIG STEWART. I'M HERE ON
15 BEHALF OF INTUIT.

16 THE COURT: OKAY. GOOD AFTERNOON.

17 THE CLERK: AND MS. HENN IS HERE.

18 THE COURT: ON BEHALF OF --

19 MS. HENN: PIXAR AND LUCASFILM.

20 THE COURT: OKAY. YOU'RE THE MAIN ATTRACTION TODAY.
21 YOU SHOULD BE SITTING UP FRONT AND MAKE ALL THESE OTHER PEOPLE
22 SIT IN THE BACK.

23 ALL RIGHT. WELL, I ACTUALLY WANTED TO HANDLE THE
24 PRELIMINARY APPROVAL FIRST, SO IF WE COULD -- SO MR. VAN NEST,
25 ARE YOU SPEAKING FOR THE SETTLING DEFENDANTS OR JUST THE

1 NON-SETTLING DEFENDANTS?

2 MR. VAN NEST: NO, YOUR HONOR. THE NON-SETTLING.

3 THE COURT: OH. YOU WANT TO CHANGE STATUS TO
4 SETTLING DEFENDANTS?

5 (LAUGHTER.)

6 MR. VAN NEST: I DO NOT.

7 THE COURT: OKAY. ALL RIGHT.

8 OKAY. WHY IS THE PERCENTAGE OF CLASS COMPENSATION THAT
9 THIS SETTLEMENT FUND REPRESENTS, WHY DOES THAT HAVE TO BE
10 SEALED?

11 MS. DERMODY: WELL, YOUR HONOR, WE DIDN'T SEAL THE
12 PERCENTAGE OF CLASS MEMBERS EMPLOYED BY SETTLING DEFENDANTS,
13 BUT WE, OUT OF AN ABUNDANCE OF CAUTION, THOUGHT WE SHOULD SEAL
14 THE COMPENSATION AMOUNT, WHICH WAS DERIVED FROM THE
15 CONFIDENTIAL DATA THAT WAS PRODUCED.

16 I THINK IT'S UP TO YOUR HONOR WHETHER THAT SHOULD STAY
17 UNDER SEAL AND FOR THE DEFENDANTS THEMSELVES TO MAKE THE
18 ARGUMENTS ABOUT CONFIDENTIALITY.

19 THE COURT: OKAY. AND THAT IS BASED ON THE DATA OF
20 ALL SEVEN DEFENDANTS? OR JUST THE THREE SETTLING DEFENDANTS?

21 MS. DERMODY: ALL SEVEN, YOUR HONOR.

22 THE COURT: OH, I SEE. OKAY. LET ME HEAR, THEN,
23 FROM THE DEFENDANTS WHY THAT NEEDS TO BE SEALED.

24 MR. STEWART: YOUR HONOR, CRAIG STEWART.

25 I GUESS I'M NOT QUITE CLEAR WHICH PORTION YOUR HONOR IS

1 REFERRING TO AS BEING UNDER SEAL. THERE'S AN ATTACHMENT TO THE
2 SETTLEMENT AGREEMENT THAT IS UNDER SEAL.

3 BUT WITH RESPECT TO THE FORMULA, THE FRACTION THAT'S
4 PROVIDED IN THE SETTLEMENT AGREEMENT THAT THE -- BY WHICH THE
5 COMPENSATION PAID TO CLASS MEMBERS WILL BE PAID, DETERMINED AND
6 PAID, MY UNDERSTANDING IS THAT THAT'S NOT UNDER SEAL.

7 THE COURT: WELL, WHAT IS REDACTED AND WHAT YOU'RE
8 SEEKING TO SEAL IS THE PERCENTAGE OF THE TOTAL CLASS
9 COMPENSATION THAT THE SETTLEMENT FUND IN THESE TWO
10 SETTLEMENTS -- I GUESS I SHOULD SAY THREE SETTLEMENTS
11 REPRESENTS. THAT NUMBER HAS BEEN REDACTED.

12 MS. DERMODY: YOUR HONOR, I'M SORRY, IF I COULD TRY
13 TO BAIL OUT MY COLLEAGUE, BECAUSE THEY WEREN'T RESPONSIBLE FOR
14 PUTTING TOGETHER THE MOTION FOR PRELIMINARY APPROVAL --

15 THE COURT: OKAY.

16 MS. DERMODY: -- AND THEY MIGHT NOT BE FULLY AWARE OF
17 WHAT YOUR HONOR IS ASKING ABOUT, WHICH REALLY CAME FROM THAT
18 BRIEF.

19 THAT WAS A BRIEF THAT WE FILED, AND PLAINTIFFS' COUNSEL,
20 AGAIN, OUT OF ABUNDANCE OF CAUTION, REDACTED ONE LINE FROM THAT
21 BRIEF, WHICH BASICALLY WAS -- IN ADDITION TO SPECIFYING THE
22 PERCENTAGE OF CLASS MEMBERS THAT CAME FROM THE SETTLING
23 DEFENDANTS, SPECIFIED THE AMOUNT OF COMPENSATION ATTRIBUTABLE
24 TO THOSE CLASS MEMBERS FROM THE SETTLING DEFENDANTS, SO IT WAS
25 DERIVED FROM ALL OF THE DATA PRODUCED BY ALL SEVEN COMPANIES.

1 IT'S DATA THAT ALL SEVEN DEFENDANTS THEMSELVES HAVE CLAIMED AS
2 CONFIDENTIAL.

3 AND IF YOUR HONOR THINKS THAT IT'S IN THE BEST INTERESTS
4 OF THE CLASS TO REVEAL THAT INFORMATION, WE, OF COURSE, WOULD
5 NOT DISAGREE AT ALL, BUT WE THOUGHT WE BETTER NOT BE ON THE
6 WRONG SIDE OF THAT ARGUMENT IN NOT PUTTING THAT UNDER SEAL IN
7 THE FIRST INSTANCE.

8 THE COURT: OKAY. I'M JUST TRYING TO FIGURE OUT WHAT
9 WE CAN TALK ABOUT TODAY.

10 SO WHAT IS THE POINT OF SEALING THAT PERCENTAGE OF CLASS?

11 MR. STEWART: WELL, I THINK THAT ON THAT, YOUR HONOR,
12 NOW THAT I UNDERSTAND WHAT WE'RE TALKING ABOUT --

13 THE COURT: SURE, OKAY.

14 MR. STEWART: -- I WOULD NEED TO CONFER WITH THE
15 OTHER DEFENDANTS, BECAUSE THIS IS ALL -- IN GENERAL, WE'VE HAD
16 THE PROTECTIVE ORDER THAT'S COVERED ALL OF THE SALARY
17 INFORMATION OF THE VARIOUS DEFENDANTS --

18 THE COURT: OKAY.

19 MR. STEWART: -- INCLUDING ANY INFORMATION THAT WOULD
20 ALLOW THE PUBLIC TO GET A SENSE OF WHAT EACH OF THESE COMPANIES
21 IS PAYING ITS EMPLOYEES.

22 SO THIS IS AN ISSUE THAT WOULD BE AFFECTING ALL OF THE
23 DEFENDANTS, NOT JUST SIMPLY THE TWO SETTLING DEFENDANTS, BUT
24 ALL OF THE OTHER DEFENDANTS.

25 THE COURT: SURE. WELL, EVERYONE IS HERE, SO LET ME

1 HEAR FROM -- LET ME HEAR ON THIS. I JUST WANT TO TAKE CARE OF
2 THE SEALING ISSUE, BECAUSE THEN WE CAN UNDERSTAND THE SCOPE OF
3 WHAT WE CAN DISCUSS TODAY.

4 MR. VAN NEST: YOUR HONOR, SPEAKING FOR THE
5 NON-SETTLING DEFENDANTS, WE HAVEN'T BEEN CONSULTED OR ADVISED
6 OF WHAT THEY'RE TALKING ABOUT.

7 IF WHAT THEY'RE TALKING ABOUT IS AGGREGATE, AVERAGE
8 SALARY DATA, I DON'T THINK ANYBODY HAS AN OBJECTION TO THAT.

9 IF WHAT THEY'RE TALKING ABOUT IS HOW MUCH OF THE FUND IS
10 PAID OUT TO CLASS MEMBERS, I DON'T THINK -- AS LONG AS IT'S NOT
11 SEPARATED BY DEFENDANT, I DON'T THINK WE HAVE AN OBJECTION TO
12 THAT.

13 I'M NOT REALLY SURE WHAT'S UNDER SEAL. WE HAVEN'T BEEN
14 CONSULTED AT ALL IN RESPECT TO THIS.

15 THE COURT: SO WITH REGARD TO THE MOTION, THEY HAVE
16 SAID THAT THESE THREE SETTLING DEFENDANTS' EMPLOYEES
17 REPRESENTING A LITTLE LESS THAN 8 PERCENT OF THE TOTAL PUTATIVE
18 CLASS.

19 MR. VAN NEST: RIGHT.

20 THE COURT: OKAY? AND THEN THEY SAY, "AND THIS
21 SETTLEMENT FUND REPRESENTS X PERCENTAGE OF THE TOTAL CLASS
22 COMPENSATION," AND THAT NUMBER, THE X PERCENTAGE OF TOTAL CLASS
23 COMPENSATION, IS WHAT HAS BEEN REDACTED FROM THE MOTION AND
24 THERE IS A REQUEST TO SEAL IT.

25 AND SO I'M JUST TRYING TO GET A SENSE OF HOW IMPORTANT

1 THAT IS TO SEAL IT AND WHETHER WE CAN TALK ABOUT IT OR NOT
2 TODAY.

3 MR. VAN NEST: I DON'T THINK THERE'S ANY PROBLEM
4 TALKING ABOUT IT.

5 THE COURT: OKAY.

6 MR. VAN NEST: I DON'T SEE ANY OBJECTION.

7 THE COURT: OKAY.

8 MR. VAN NEST: THIS IS A NUMBER THAT CUTS ACROSS ALL
9 DEFENDANTS, THE WHOLE CLASS. IT DOESN'T DISCLOSE ANYBODY'S
10 INDIVIDUAL COMPENSATION PRACTICES OR LEVELS, SO WE DON'T HAVE
11 ANY OBJECTION TO THAT, YOUR HONOR.

12 THE COURT: OKAY. ALL RIGHT. SO THEN THAT -- THE
13 REQUEST TO SEAL THAT NUMBER WILL BE DENIED, AND I BELIEVE THAT
14 NUMBER IS 5 PERCENT. IS THAT CORRECT?

15 MS. DERMODY: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: OKAY. ALL RIGHT. LET'S JUST TAKE CARE
17 OF THE OTHER SEALING, TOO.

18 YOUR REQUEST TO SEAL ALL THE JOB TITLES, THAT'S FINE.

19 I GUESS MY QUESTION REMAINING THEN IS THIS ATTACHMENT
20 ABOUT, YOU KNOW, UNDER WHAT CONDITIONS, YOU KNOW, THIS
21 AGREEMENT WOULD BE TERMINATED.

22 EXPLAIN TO ME A LITTLE BIT MORE WHY THAT NEEDS TO BE
23 SEALED, BECAUSE I GENERALLY DON'T SEAL THAT IN CLASS ACTION
24 SETTLEMENTS.

25 MS. DERMODY: SURE, YOUR HONOR.

1 THAT IS, IN OUR PRACTICE, A FAIRLY STANDARD REQUEST ONLY
2 TO DEAL WITH THE POTENTIAL FOR A PROFESSIONAL OBJECTOR OR OTHER
3 GROUP TO TRY TO ORGANIZE LEVERAGE ON A SETTLEMENT BECAUSE THEY
4 KNOW THAT THERE'S A TARGET TO TRY TO HIT.

5 SO SINCE THAT NUMBER IS NOT MATERIAL TO THE CLASS'S
6 DECISION, IT DOESN'T AFFECT THE TERMS FOR THE CLASS, WE THINK
7 THAT'S APPROPRIATE TO KEEP UNDER SEAL.

8 BUT IT IS A CONDITION PRECEDENT TO THE SETTLEMENT BEING
9 FINALIZED THAT THERE NOT BE A CERTAIN NUMBER OF OPT OUTS THAT
10 ARE HIT IN THE SETTLEMENT.

11 WE DON'T THINK THAT NUMBER IS AT RISK AT ANY STRETCH HERE,
12 BUT WE THINK IT'S A BEST PRACTICE AND THERE'S BEEN LAW REVIEWS
13 WRITTEN ABOUT WHY YOU MIGHT HAVE THIS SORT OF PROCEDURE, AND WE
14 THINK IT'S THE BEST WAY TO AVOID DEALING WITH AN OUTSIDE GROUP
15 THAT'S UP TO NO GOOD.

16 THE COURT: SO YOU THINK THAT THEY WOULD BE ABLE TO
17 MOBILIZE THIS MANY MEMBERS OF THE CLASS, OF THE SETTLING CLASS
18 TO OPT OUT?

19 MS. DERMODY: I THINK THERE IS ZERO CHANCE IT'LL
20 HAPPEN ACTUALLY, YOUR HONOR, BUT I THINK IT'S A BEST PRACTICE
21 TO KEEP THOSE TYPE OF AGREEMENTS UNDER SEAL, SO WE'VE DONE THAT
22 HERE.

23 IF YOUR HONOR IS NOT INCLINED TO DO THAT, I DON'T THINK
24 IT'S PUTTING THE SETTLEMENT AT RISK, BUT I THINK IT IS A BEST
25 PRACTICE.

1 THE COURT: HM. BECAUSE I'VE NEVER SEEN THIS REQUEST
2 BEFORE TO SEAL THESE SORT OF, YOU KNOW, OPT OUT SAFELY VALVE,
3 FOR LACK OF A BETTER WORD, TERMS.

4 IT JUST SEEMS AS IF THE RELEVANT TERMS, WHICH I THINK THIS
5 WOULD BE ONE, SHOULD BE OPEN SO THAT PUTATIVE CLASS MEMBERS CAN
6 DECIDE IF THEY WANT TO BE PART OF THIS SETTLEMENT.

7 MS. DERMODY: YOUR HONOR, IF IT'S IMPORTANT TO YOUR
8 HONOR, WE'RE FINE WITH THAT BEING UNSEALED.

9 THE COURT: OKAY.

10 MS. DERMODY: WE -- IF IT EVER COMES DOWN TO IT AGAIN
11 AND WE'RE IN THIS POSITION WHERE WE WANT TO HAVE SOMETHING
12 UNDER SEAL, WE'LL, NEXT TIME, PROVIDE YOUR HONOR WITH SOME
13 ORDERS TO SHOW YOU HOW IT'S BEEN DONE IN THIS DISTRICT WITH
14 OTHER JUDGES. BUT WE'RE ABSOLUTELY FINE IF YOU WANT TO UNSEAL
15 IT HERE.

16 THE COURT: ALL RIGHT. SO I DON'T THINK I WILL SEAL
17 ATTACHMENT 1. I THINK IN BOTH -- IN THE CONTEXT OF BOTH
18 SETTLEMENTS THEY ARE ATTACHMENT 1.

19 BUT I WILL SEAL EXHIBIT E TO THE LUCASFILM AND PIXAR
20 AGREEMENT, AND EXHIBIT D TO THE INTUIT AGREEMENT SINCE THAT
21 LAYS OUT ALL OF THE JOB TITLES THAT ARE AFFECTED.

22 I ASSUME THE DEFENDANTS HAVE AN INTEREST -- MAYBE I SHOULD
23 LOOK TO --

24 MR. VAN NEST: WE DO YOUR HONOR

25 THE COURT: -- IN SEALING WHAT ALL THE VARIOUS JOB

1 TITLES ARE, AND -- IS THAT CORRECT?

2 MR. STEWART: YES, YOUR HONOR. YES.

3 MS. HENN: YOUR HONOR, THE PIXAR AND LUCASFILM TITLES
4 ARE ALREADY PUBLIC. WE JUST HAD A DIFFERENT POSITION ON THIS
5 ISSUE.

6 THE COURT: SO YOU DON'T -- ARE YOU REQUESTING THAT
7 EXHIBIT E BE SEALED OR NOT?

8 MS. HENN: WELL, EXHIBIT E INCLUDES MORE THAN PIXAR
9 AND LUCASFILM TITLES. I WANT TO BE CLEAR TO THE COURT THAT AS
10 TO THOSE TWO COMPANIES, THAT INFORMATION IS ALREADY IN THE
11 PUBLIC RECORD.

12 THE COURT: OKAY. SO THEN I MAY -- I WILL SAY, AS
13 FAR AS THE SEALING, I HAVE REALLY APPRECIATED -- I FELT THAT,
14 OF ALL THE DEFENDANTS, LUCASFILM AND PIXAR HAVE BEEN THE BEST
15 AT NARROWLY TAILORING THEIR SEALING REQUESTS, AND WHEN I ISSUE
16 ALL MY SEALING ORDERS, WHICH I WILL DO SOON, CERTAIN DEFENDANTS
17 HAVE NOT BEEN AS GOOD, AND I WOULD SAY INTEL HAS BEEN THE
18 WORST, SEALING OBJECTIONS AS TO FORM, SEALING INTEL'S LOGO. I
19 MEAN, IT'S JUST COMPLETELY INDISCRIMINATE.

20 SO I DID WANT TO ASK THAT -- THERE'S WIDE VARIATION IN HOW
21 THE DEFENDANTS ARE HANDLING THEIR SEALING. BUT, YOU KNOW,
22 SEALING THE LOGO AND INTRODUCTORY PAGES AND OBJECTIONS AS TO
23 FORM WAS JUST REALLY WAY OVERBROAD, SO THAT'S GOING TO HAVE TO
24 BE FIXED.

25 OKAY. WELL, AT LEAST AS TO EXHIBIT E, AS TO EXHIBIT E TO

1 THE LUCASFILM/PIXAR, I'M GOING TO DENY THE SEALING AS TO PAGES
2 14 AND 15 OF THAT DOCUMENT.

3 OKAY. SO WHAT IS THE TOTAL AMOUNT OF DAMAGES THAT THE
4 PLAINTIFFS BELIEVE THAT CLASS MEMBERS SHOULD RECOVER AS AN
5 AGGREGATE?

6 MS. DERMODY: SO YOUR HONOR IS REQUESTING THAT WE
7 PROVIDE YOU WITH OUR EXPERT ANALYSIS? IS THAT -- I'M JUST A
8 LITTLE --

9 THE COURT: WELL, I MEAN, IF YOU'RE SAYING IT'S 5
10 PERCENT, DO I JUST MULTIPLY 5 --

11 MS. DERMODY: AS A SETTLEMENT POSITION, YES, YOUR
12 HONOR, WE THINK THAT WHAT IS RECOVERED HERE FOR THESE CLASS
13 MEMBERS --

14 THE COURT: UM-HUM.

15 MS. DERMODY: -- IS A VERY SIGNIFICANT RECOVERY BASED
16 ON THE EXPOSURE, THE TIMING OF THE SETTLEMENTS, ALL OF THOSE
17 THINGS.

18 AND THAT IT'S NOT A ONE-TO-ONE, OBVIOUSLY. IT'S TAKING
19 INTO ACCOUNT RISK AND TIME IN THE CASE.

20 BUT WE THINK THIS IS CERTAINLY A VERY GOOD SETTLEMENT FOR
21 THE CLASS MEMBERS. IT MEETS ALL OF THE ELEMENTS OF PRELIMINARY
22 APPROVAL. IT'S FAIR, REASONABLE, AND ADEQUATE AS A PRELIMINARY
23 MATTER AND SHOULD AT LEAST BE NOTICE TO THE CLASS.

24 THESE ARE THE SMALLEST EMPLOYERS IN THE CLASS AND IT
25 REFLECTS THE SMALLEST PART OF THE CASE BEING SETTLED, SO IT'S

1 GOING TO BE, IN OUR VIEW, A SMALLER, MUCH SMALLER AMOUNT THAN
2 WHAT THE VALUE OF THE CASE IS.

3 THE COURT: SO WHAT IS THE VALUE OF THE CASE? WHAT
4 IS THE TOTAL AMOUNT OF DAMAGES IN AGGREGATE?

5 MS. DERMODY: WELL, AGAIN, I THINK YOUR HONOR IS -- I
6 WANT TO MAKE SURE I'M UNDERSTANDING THE QUESTION. YOU'RE
7 ASKING US TO SHARE WITH THE COURT WHAT OUR EXPERT ANALYSIS IS
8 RIGHT NOW AND RIGHT IN THE, SORT OF IN THE MIDDLE OF DOING THE
9 EXPERT WORK RIGHT NOW? BUT I -- CERTAINLY IT'S A MUCH BIGGER
10 MULTIPLE OF THAT.

11 I MEAN, IF YOUR HONOR WANTS US TO SUBMIT SOMETHING TO THE
12 COURT IN CONNECTION WITH FINAL APPROVAL WHICH SETS FORTH WHAT
13 IS THE CALCULATION BASED ON EXPOSURE, WE'D BE HAPPY TO DO THAT.

14 I THINK DOING THAT IN OPEN COURT RIGHT NOW, WITHOUT AN
15 OPPORTUNITY TO CONSIDER WHETHER THAT SHOULD BE UNDER SEAL OR IN
16 CAMERA, IS SOMETHING THAT WE WOULD REQUEST NOT TO HAVE TO DO AT
17 THE PRELIMINARY APPROVAL STAGE.

18 THE COURT: WELL, I GUESS -- HOW DID YOU FIGURE OUT
19 IF IT WAS 5 PERCENT IF YOU DIDN'T KNOW WHAT THE TOTAL AMOUNT
20 WAS?

21 MS. DERMODY: OH, I'M SORRY, YOUR HONOR. I
22 MISUNDERSTOOD YOUR QUESTION.

23 THE COURT: YEAH, UM-HUM.

24 MS. DERMODY: SO WE BASICALLY LOOKED AT WHAT THE
25 TOTAL AMOUNT OF SALARY WAS BY ALL THE CLASS MEMBERS IN THE

1 CASE --

2 THE COURT: UM-HUM.

3 MS. DERMODY: -- AND WHAT AMOUNT OF THAT SALARY WAS
4 WITHIN THESE CLASS MEMBERS EMPLOYED BY THE SETTLING DEFENDANTS.

5 SO WE'RE NOT TALKING NECESSARILY ABOUT WHAT THE EXPOSURES
6 ARE WITH THESE NUMBERS, BUT WHAT THEY REFLECT IN TERMS OF WHAT
7 THE FOOTPRINT IS IN THE CASE, IF YOU UNDERSTAND WHAT I'M
8 SAYING.

9 THE COURT: SO THIS 5 PERCENT NUMBER DOESN'T HAVE
10 ANYTHING TO DO WITH THE AMOUNT OF MONEY THAT THIS CLASS IS
11 GOING TO GET FROM THESE SETTLEMENT AGREEMENTS?

12 MS. DERMODY: I THINK IT'S --

13 THE COURT: THIS IS JUST WHAT YOU THINK THEY WOULD BE
14 OWED OUT OF THE TOTAL AMOUNT THAT YOU THINK ALL PUTATIVE CLASS
15 MEMBERS WOULD BE OUT?

16 MS. DERMODY: WHAT THE CLASS MEMBERS WILL GET IS THE
17 \$20 MILLION, YOUR HONOR, SO THAT GETS DISTRIBUTED ACROSS THE
18 CLASS, AND IF YOU WERE TO CERTIFY THE SETTLEMENT CLASS, THAT'S
19 ROUGHLY SOMETHING LIKE 300 BUCKS A CLASS MEMBER ON A SLIDING
20 SCALE. SO SOME WOULD GET LESS THAN THAT, SOME WOULD GET MORE
21 THAN THAT DEPENDING WHAT THEIR SALARY WAS AND CLASS POSITION
22 DURING THE CLASS TIME PERIOD.

23 AGAIN, EITHER THE --

24 THE COURT: I'M SORRY TO INTERRUPT YOU. HOW DID YOU
25 CALCULATE THE 5 PERCENT? WHAT DOES THAT MEAN?

1 MS. DERMODY: SO THE -- I'LL START WITH THE 8
2 PERCENT, RIGHT?

3 THE COURT: OKAY.

4 MS. DERMODY: SO WE'VE GOT THE -- 8 PERCENT OF THE
5 CLASS WAS EMPLOYED BY THE THREE DEFENDANTS.

6 THE COURT: OKAY.

7 MS. DERMODY: THE SEVEN DEFENDANTS PAID ALL THE CLASS
8 MEMBERS A CERTAIN AMOUNT OF COMPENSATION. THE COMPENSATION IN
9 THE ENTIRE CLASS ATTRIBUTED -- ATTRIBUTABLE TO THESE THREE
10 DEFENDANTS' SALARY IS THE 5 PERCENT.

11 THE COURT: SAY THAT AGAIN. THE TOTAL AMOUNT OF
12 MONEY PAID TO THE --

13 MS. DERMODY: CLASS MEMBERS --

14 THE COURT: -- CLASS MEMBERS --

15 MS. DERMODY: -- BY THESE THREE DEFENDANTS --

16 THE COURT: -- IS 5 PERCENT?

17 MS. DERMODY: RIGHT.

18 THE COURT: OH, I SEE. SO THAT NUMBER HAS NOTHING TO
19 DO WITH THE 20 MILLION THEN?

20 MS. DERMODY: IT'S JUST TELLING YOU WHAT -- IT'S
21 GIVING YOU A SENSE OF HOW BIG A SLICE OF THE CASE THIS
22 SETTLEMENT IS RELATIVE TO THE REST OF THE CASE.

23 THE COURT: RIGHT. BUT IT WOULD BE A 5 PERCENT
24 NUMBER WHETHER THE SETTLEMENT WAS 5 MILLION OR WHETHER THE
25 SETTLEMENT WAS 50 MILLION?

1 MS. DERMODY: YES.

2 THE COURT: BECAUSE YOU'RE NOT ACTUALLY TYING --

3 MS. DERMODY: THAT'S RIGHT, YOUR HONOR.

4 THE COURT: -- THE SETTLEMENT FUND AMOUNT?

5 MS. DERMODY: YES.

6 THE COURT: SO THE 5 PERCENT IS REALLY NOT VERY
7 USEFUL OF A NUMBER, AND YOU'RE SAYING YOU'RE NOT PREPARED TODAY
8 TO SAY WHAT PERCENTAGE OF THE TOTAL RECOVERY IS REPRESENTED BY
9 THE 20 MILLION?

10 MS. DERMODY: I CAN CAUCUS WITH MY GROUP AND SEE IF
11 THERE IS AN APPROACH THAT WE THINK WE COULD TAKE TO DO THAT,
12 BUT I THINK TO SHARE THE EXPOSURE NUMBER IN OPEN COURT WHEN
13 WE'RE RIGHT IN THE MIDDLE OF OUR MERITS REPORTS MIGHT BE AN
14 AWKWARD PART OF THE CASE TIMING-WISE, YOUR HONOR.

15 THE COURT: OKAY. WHEN IS YOUR EXPERT REPORT DUE?
16 IT'S DUE --

17 MS. DERMODY: NEXT WEEK.

18 THE COURT: I SEE. OKAY. ALL RIGHT. I WON'T PUSH
19 THIS ANYMORE.

20 LET ME ASK, I'M A LITTLE BIT UNCLEAR ABOUT YOUR ATTORNEYS'
21 FEES. FROM WHAT I CAN TELL, YOU'RE ASKING FOR 5 MILLION FOR --
22 ALMOST 5 MILLION FOR COSTS, AND THEN ON TOP OF THAT, YOU'RE
23 GOING TO ASK FOR UP TO A THIRD OF THE TOTAL 20 MILLION FOR
24 FEES?

25 MS. DERMODY: LET ME WALK THROUGH --

1 THE COURT: SO WHAT IS THIS CLASS GOING TO GET?

2 MS. DERMODY: LET ME WALK THROUGH THIS, YOUR HONOR.

3 THE COURT: A FIVE BUCK CERTIFICATE? I MEAN, THIS IS

4 GETTING REALLY SMALL, ISN'T IT?

5 MR. SAVERI: RIGHT, RIGHT. SO THE --

6 THE COURT: YOU TELL ME. SO YOU'RE SAYING YOU'RE

7 GOING TO GET 5 MILLION FOR COSTS, AND THEN YOU'RE GOING TO SEEK

8 ANOTHER, WHAT, 7-PLUS MILLION FOR FEES? SO YOU'RE GOING TO GET

9 APPROXIMATELY 12 MILLION OUT OF 20 MILLION?

10 MS. DERMODY: SO THERE'S A COUPLE DIFFERENT PARTS OF

11 THIS, YOUR HONOR. WE CONSIDER THESE TO BE PARTIAL SETTLEMENTS,

12 THAT A VERY BIG PART OF THE CASE HASN'T BEEN RESOLVED, EITHER

13 THROUGH TRIAL OR SETTLEMENT.

14 WE, AS CURRENTLY CONSTRUCTED, DON'T INTEND TO SEND OUT

15 CHECKS TO CLASS MEMBERS RIGHT AWAY. WE WANT TO HOLD THAT

16 MONEY, AND IF WE HOLD THAT MONEY, THERE MAY BE AN OPPORTUNITY

17 FOR ADDITIONAL SETTLEMENTS TO COME IN, OR EVEN A VERDICT IN

18 THIS CASE.

19 AT SOME POINT WE WOULD HOPE THAT THERE WOULD BE A LOT MORE

20 MONEY TO DISTRIBUTE TO THE CLASS. WE WOULD HOPE NOT TO GO

21 THROUGH A VERY EXPENSIVE CLAIMS PROCESS THAT DEPLETES THE

22 SETTLEMENT FUND IN A SERIAL WAY EACH AND EVERY TIME. IF WE CAN

23 JUST DO IT ONE TIME FOR THE CLASS MEMBERS, THAT WOULD BE IDEAL.

24 IF THERE WERE A LITIGATION CLASS CERTIFIED IN THE SAME

25 TIME PERIOD, WE WOULD SEND OUT NOTICE ONCE THAT WOULD DESCRIBE

1 THE LITIGATION CLASS AND THE SETTLEMENT CLASS, SAVING THE MONEY
2 OF DOING MULTIPLE NOTICES TO THE CLASS.

3 SO THERE ARE LOTS OF REASONS TO SORT OF HOLD THAT MONEY AS
4 KIND OF A TRUST FUND FOR THE CLASS MEMBERS.

5 HOWEVER, THE COSTS THAT HAVE BEEN ASSESSED IN THE CASE,
6 THAT HAVE BEEN COMING OUT OF POCKET, ARE THE COSTS OF THE CASE
7 AND WE THINK THAT THOSE SHOULD BE AT LEAST REPAYED NOW AND WE
8 SHOULD DEFER UNTIL A LATER TIME IN THE CASE AN APPLICATION FOR
9 ATTORNEYS' FEES FROM THE FUND, WITH THE IDEA BEING THAT YOUR
10 HONOR WOULD TAKE A LOOK AT THAT POINT TO SEE WHETHER YOUR HONOR
11 THOUGHT, YOU KNOW, WHATEVER THE FEE YOU THOUGHT WAS
12 APPROPRIATE, WHETHER IT WOULD BE A THIRD, SOMETHING LESS THAN A
13 THIRD, PAID ON WHATEVER THE FUND IS AT THAT POINT.

14 BUT WE THOUGHT THE CLASS NEEDS TO BE NOTICED FOR THE
15 HIGHEST POSSIBLE AMOUNT WE MIGHT REQUEST SO THAT THE CLASS
16 KNOWS, RIGHT NOW, IT'S POSSIBLE DOWNSTREAM THAT THE ATTORNEYS
17 IN THIS CASE MIGHT APPLY FOR A ONE-THIRD FEE OFF OF THIS FUND,
18 OR WHATEVER FUND IT GROWS TO BE.

19 THERE COULD BE OTHER WAYS TO DO THIS, BUT WE THOUGHT THAT
20 WAS THE MOST CONSERVATIVE APPROACH AND THE WAY THAT WOULD
21 PROVIDE THE MOST AMOUNT OF TRANSPARENCY TO THE CLASS MEMBERS.

22 WE AGREE WITH YOUR HONOR COMPLETELY THAT WE DON'T WANT TO
23 HAVE A SITUATION, IF WE CAN AT ALL AVOID IT, WHERE MOST OF THE
24 MONEY THAT'S RECOVERED FOR THE CLASS ENDS UP GETTING PAID OUT
25 TO OTHERS, NOT THE CLASS MEMBERS. WE WANT TO SEE A MAXIMUM

1 RECOVERY TO THE CLASS.

2 BUT BEING WHAT IT IS, WE'RE VERY EARLY IN THE CASE AND
3 THERE'S THE SMALLEST DEFENDANTS THAT HAVE COME IN, SO THAT'S
4 THE AMOUNT OF THE FUND RIGHT NOW.

5 AND RELATIVE TO THE INVESTMENT IN THE CASE, WHICH THE
6 CLASS MEMBERS HAVE NOT HAD TO PAY FOR AT ALL TO DATE, THERE'S
7 SOME, SOME OUTFLOWS WE THINK ARE APPROPRIATE AT THIS STAGE JUST
8 TO REIMBURSE THE COUNSEL FOR THE AMOUNT OF MONEY IT'S COSTING
9 FOR THE EXPERTS AND THE LIKE TO BRING THE CASE HOME.

10 THE COURT: WHAT, OTHER THAN EXPERTS, ARE TOTALING
11 ALMOST 5 MILLION?

12 MS. DERMODY: THE EXPERTS ARE A VERY, VERY BIG PART
13 OF THAT, YOUR HONOR.

14 THE COURT: UM-HUM.

15 MS. DERMODY: THEY'RE VERY EXPENSIVE, SO THAT'S THE
16 BIG BULK OF THE COSTS OF THOSE -- A BIG BULK OF THOSE COSTS.

17 TO SOME MUCH SMALLER DEGREE, THINGS LIKE DEPOSITION
18 TRANSCRIPTS, COURT REPORTERS, THINGS LIKE THAT. WE HAD, AS YOU
19 KNOW --

20 THE COURT: 91 DEPOSITIONS.

21 MS. DERMODY: YES, A LOT OF DEPOSITIONS IN THE CASE.
22 THOSE WERE COSTLY. BUT MOST OF IT IS EXPERTS, YOUR HONOR,
23 QUITE FRANKLY.

24 THE COURT: WELL, LET'S TALK ABOUT THE TIMING,
25 BECAUSE I'M NOT -- I'M NOT REALLY CLEAR HOW I'M EXPECTED TO

1 MAKE A DECISION IF I GRANT PRELIMINARY APPROVAL, ON FINAL
2 APPROVAL, WITHOUT KNOWING HOW MUCH ANY CLASS MEMBER IS GOING TO
3 RECEIVE FROM THIS SETTLEMENT, AND WITHOUT KNOWING HOW MUCH
4 MONEY YOU'RE GOING TO SEEK IN ATTORNEYS' FEES.

5 IT'S A REALLY BIG DIFFERENCE WHETHER IT'S -- YOU KNOW, NOT
6 THAT I WOULD -- I'M NOT PREJUDGING IT, BUT, I MEAN, IT'S VERY
7 IMPORTANT, I THINK, TO DETERMINING WHETHER IT'S A FAIR AND
8 REASONABLE SETTLEMENT AND YOU'RE ASKING ME TO MAKE THAT
9 DECISION WITHOUT KNOWING WHAT THE BIGGEST ANSWERS ARE GOING TO
10 BE, WHICH ARE, YOU KNOW, HOW MUCH IS THIS CLASS GOING TO
11 RECEIVE, NUMBER ONE.

12 MS. DERMODY: OKAY, YOUR HONOR, YES.

13 WELL, SO I THINK THE TIMING IS PROPOSED THIS WAY: SO
14 THERE'S A NUMBER OF STEPS IN THE APPROVAL PROCESS.

15 THE COURT: UM-HUM.

16 MS. DERMODY: THE FIRST IS, IF YOUR HONOR APPROVES
17 THE SETTLEMENT, FOR NOTICE TO GO OUT TO THE CLASS.

18 THERE'S GOING TO BE A STEP THAT INVOLVES GETTING THE
19 CLAIMS ADMINISTRATOR THE IMPORTANT CLASS DATA, AND WE'LL TABLE
20 THAT FOR LATER DISCUSSION IN THIS HEARING, BUT THE DATA ABOUT
21 THE CLASS. THE CLAIMS ADMINISTRATOR WILL TAKE A COUPLE WEEKS
22 TO PROCESS THAT AND THEN SEND NOTICE OUT TO THE CLASS.

23 THERE WILL BE 45 DAYS FOR OBJECTIONS AND OPT OUTS.

24 THERE WILL BE SOME BRIEFING FOR YOUR HONOR FOR FINAL
25 APPROVAL AND THEN A FINAL APPROVAL HEARING.

1 AT THAT POINT YOUR HONOR CAN CONSIDER THE FEEDBACK FROM
2 THE CLASS AND HOW MANY OPT OUTS THERE ARE, AND IF YOUR HONOR
3 THINKS AT THAT TIME THAT THE SETTLEMENT MEETS THE STANDARD FOR
4 FINAL APPROVAL, WHAT YOUR HONOR WOULD APPROVE IS A SETTLEMENT
5 FUND THAT'S THE \$20 MILLION FROM THE TWO SETTLEMENTS THAT WOULD
6 GO INTO ESSENTIALLY AN ESCROW AND THE PAYMENT OF COSTS, IN SOME
7 DEGREE, OUT TO PLAINTIFFS' COUNSEL TO REIMBURSE THEM FOR COSTS,
8 WITH RESERVATION OF DECISION ON WHETHER THE COURT WOULD
9 CONSIDER TO APPROVE ANY ATTORNEYS' FEES FOR A LATER POINT IN
10 THE CASE WHERE WE COME BACK TO THE COURT FOR THE ATTORNEYS'
11 FEES ISSUE, WITH THE NOTICE BEING THAT LET'S SAY THIS WAS THE
12 ONLY SETTLEMENT IN THE CASE AND WE HAD LITIGATED THIS CASE ALL
13 THESE YEARS WITH ALL OF THIS DISCOVERY, THAT PRESUMABLY YOUR
14 HONOR WOULD APPROVE COSTS, RECOGNIZING THAT THAT WAS WHAT WAS
15 REQUIRED TO PROSECUTE THE CASE, AND WOULD CONSIDER SOME AMOUNT
16 OF ATTORNEYS' FEES FOR THE RECOVERY, EVEN IF PARTIAL TO THE
17 CLASS.

18 AND YOUR HONOR MIGHT DECIDE, YOU KNOW, THAT A THIRD IS TOO
19 RICH GIVEN THE AMOUNT RECOVERED AND MIGHT CUT THAT BACK.

20 BUT THE IDEA IN THIS PROCESS IS THAT YOUR HONOR -- THAT WE
21 WOULD NOTICE THE CLASS AND GIVE THE CLASS A CHANCE TO TELL THE
22 COURT IF THE COURT -- IF THE CLASS IS CONCERNED ABOUT THAT
23 HYPOTHETICAL REQUEST DOWNSTREAM AND HAVE A CHANCE TO OPT OUT OF
24 THE CASE IF IT WANTED TO OPT OUT OF THE CASE.

25 ALL OF THAT RECORD WOULD HAVE BEEN MADE AT FINAL APPROVAL,

1 AND THE ONLY THING THAT WOULD BE DETERRED -- EXCUSE ME --
2 DEFERRED WOULD BE THE DECISION ON ATTORNEYS' FEES AND THE TIME
3 FOR CASHING THE CHECKS FOR THE CLASS MEMBERS, WHICH WOULD COME
4 AT A LATER POINT IN THE CASE, AND AGAIN AT A LATER POINT THAT
5 WE WOULD HOPEFULLY HAVE MORE ACHIEVEMENTS FOR THE CLASS THAT
6 WOULD BENEFIT THE CLASS AND REDUCE THE BURDEN OF THE SETTLEMENT
7 PROCESS ON THE FUND.

8 THE COURT: SO I DON'T UNDERSTAND. WHAT IS THE
9 BENEFIT OF GOING THROUGH ALL OF THAT EARLY PHASE AND THEN
10 HOLDING OFF ON DISTRIBUTING MONIES TO THE CLASS AND MAKING THE
11 ATTORNEYS' FEES DECISION AT A LATER POINT? WHAT'S THE BENEFIT
12 OF DOING ALL OF THAT WORK AND THEN JUST SORT OF PUTTING IT ON
13 HOLD?

14 MS. DERMODY: WELL, I GUESS IN PART, YOUR HONOR,
15 BECAUSE THE COURT WON'T HAVE A CHANCE TO MAKE A DETERMINATION
16 OF WHAT'S A REASONABLE ATTORNEYS' FEE UNTIL THE COURT HAS SEEN
17 THE WHOLE BODY OF WORK IN THE CASE, THAT THERE MAY BE A GREATER
18 AMOUNT OF MONEY FOR THE CLASS, IN WHICH CASE WE'D LIKE THE
19 CLASS TO HAVE A MUCH BIGGER FUND, BIGGER CHECKS GOING OUT TO
20 THE CLASS RATHER THAN SENDING THE CLASS A CHECK FOR \$100 IN
21 THIS SETTLEMENT, AND THEN \$1,000 IN THAT SETTLEMENT, AND \$5,000
22 IN THIS ONE. IT'S BASICALLY THREE CLAIMS PROCESSES THAT HAPPEN
23 FOR THE CLASS MEMBERS WHEN YOU DO THAT.

24 SO WE WANTED TO TRY TO MAXIMIZE EFFICIENCY, GET THE MOST
25 OUT THAT WE CAN, AND ALSO TO GIVE YOUR HONOR A FULL RECORD TO

1 MAKE A DETERMINATION, IS THIS A RECORD ON WHICH YOU THINK SOME
2 FEES SHOULD BE AWARDED?

3 THE COURT: WELL THEN, WHY DON'T WE REDUCE THE
4 ADMINISTRATIVE BURDEN AND JUST HAVE NOTICE GO OUT ONCE IF YOU
5 WANT TO WAIT AND SEE IF SOMEONE ELSE IS GOING TO SETTLE? I
6 GUESS I'M JUST NOT CLEAR ON WHY THERE ARE ALL THESE
7 EFFICIENCIES TO HOLD OFF ON PAYMENT TO THE CLASS AND TO HOLD
8 OFF ON ATTORNEYS' FEES DETERMINATION, BUT WE SHOULD GO AHEAD
9 AND DO ALL THIS WORKUP RIGHT UP UNTIL THAT POINT NOW BECAUSE
10 IT'S NOT -- BECAUSE YOU HAVE CONCERNS IF WE PAY THE CLASS NOW,
11 THEN THERE WOULD BE CONFUSION AMONG THE CLASS MEMBERS. I GUESS
12 I'M JUST NOT CLEAR WHY YOU'RE DRAWING THAT DISTINCTION.

13 MS. DERMODY: WELL, I THINK THERE ARE A COUPLE OF
14 REASONS, YOUR HONOR. I MEAN, ONE, THIS IS A CASE OF VERY HIGH
15 PROFILE. CLASS MEMBERS ARE VERY INTERESTED TO FIGURE OUT
16 WHAT'S GOING ON. THERE'S BEEN SOME REPORTING ABOUT THE
17 SETTLEMENT. THEY'RE EAGER TO HEAR ABOUT IT. THEY WANT TO
18 KNOW.

19 WE THINK THIS IS ONE WAY TO GET THEM ALL OUT ACCURATE
20 INFORMATION ABOUT THE SETTLEMENT SO THEY UNDERSTAND WHAT'S
21 HAPPENING AND WHAT PART OF THE CASE IS GONE, WHAT PART OF THE
22 CASE IS STILL BEING LITIGATED.

23 WE THINK THAT IT'S, YOU KNOW, KIND OF AN UNNECESSARY DELAY
24 WAITING FOR ALL OF THE CASE TO BE DONE IN ORDER TO GET ALL OF
25 IT OUT. WE DO THINK --

1 THE COURT: BUT I THINK THAT APPLIES TO PAYMENT TO
2 THE CLASS AND THAT APPLIES TO ATTORNEYS' FEES. I MEAN, IT'S
3 KIND OF OPTIMISTIC, RIGHT? I MEAN, YOU DON'T -- YOU HAVE NO
4 IDEA WHETHER ANY OF THESE DEFENDANTS ARE GOING TO SETTLE IN THE
5 NEXT TWO YEARS, SO I GUESS I'M JUST UNCLEAR ON WHY WE'RE
6 DELAYING.

7 MS. DERMODY: SO IS YOUR HONOR'S PREFERENCE THAT WE
8 DO ALL OF IT NOW OR DO NONE OF IT NOW? IS THAT -- IS THAT THE
9 FORK IN THE ROAD? BECAUSE I THINK THAT'S HELPFUL FOR US TO
10 KNOW.

11 THE COURT: I FEEL UNCOMFORTABLE RULING ON FINAL
12 APPROVAL WITHOUT KNOWING HOW MUCH EACH CLASS MEMBER IS GOING TO
13 RECEIVE AND HOW MUCH YOU'RE GOING TO ASK FOR.

14 SO IF YOU CAN PERSUADE ME THAT THERE'S A BENEFIT TO DO
15 EVERYTHING ELSE AND THEN HOLD THAT, BECAUSE I'M NOT LIKELY TO
16 RULE ON FINAL APPROVAL UNLESS I HAVE THAT INFORMATION, BECAUSE
17 I THINK THAT'S A NECESSARY COMPONENT OF DECIDING WHETHER THIS
18 IS A FAIR AND REASONABLE SETTLEMENT.

19 MS. DERMODY: OKAY, YOUR HONOR. I MEAN, I THINK
20 THAT'S FAIR.

21 THERE'S LOTS OF WAYS TO DO THIS. I DON'T THINK THERE'S
22 ANY ONE-SIZE-FITS-ALL WAY. THERE HAVE BEEN OTHER CASES IN THIS
23 DISTRICT THAT HAVE FOLLOWED THIS APPROACH AND WE WERE JUST
24 TRYING TO DO WHAT WE THOUGHT WAS A CREATIVE APPROACH.

25 IF YOUR HONOR DOESN'T LIKE IT, THERE ARE OTHER WAYS TO DO

1 THIS THAT ARE PERFECTLY APPROPRIATE.

2 WE DO THINK IT'S IMPORTANT FOR THIS SETTLEMENT PROCESS TO
3 GO THROUGH. OUR CLIENTS NEED TO KNOW WHAT'S HAPPENING. THE
4 DEFENDANTS -- THE SETTLING DEFENDANTS NEED TO HAVE FINALITY.
5 THEY WANT TO BE DONE WITH THIS CASE.

6 THE COURT: UM-HUM.

7 MS. DERMODY: SO PEOPLE NEED TO GET ON WITH THEIR
8 LIVES, AND WE WOULD -- IF YOUR HONOR REALLY WANTS TO DO IT
9 EITHER ALL NOW OR, YOU KNOW, NONE OF IT NOW, WE WANT TO GO ALL
10 NOW AND JUST FIGURE OUT WHAT'S THE RIGHT WAY TO NOTICE THE
11 CLASS, AND IF YOUR HONOR THINKS THAT THAT FEE ISSUE HAS TO BE
12 TEED UP IN THE NOTICE AND WE NEED TO REQUEST THOSE FEES AT
13 FINAL APPROVAL, THEN THAT IS EXACTLY WHAT WE'LL DO.

14 AGAIN, THERE'S NO JUST ONE WAY TO DO THIS.

15 THE COURT: UM-HUM.

16 MS. DERMODY: WE WANT TO MAKE THE COURT COMFORTABLE
17 WITH THE PROCESS.

18 THE COURT: WHAT IS THIS JUNE 1ST DATE? I DIDN'T
19 KNOW IF THIS WAS YOUR SAYING THAT YOU WOULD HOLD OFF AND THEN,
20 IF NO ONE ELSE SETTLES AS OF JUNE 1ST, YOU'RE GOING THROUGH
21 WITH THE DISTRIBUTION. THE WORDING WAS VAGUE.

22 LET ME SEE IF I CAN FIND IT.

23 MS. DERMODY: I KNOW WHAT YOU'RE TALKING ABOUT, YOUR
24 HONOR. YOU'RE ACTUALLY HIGHLIGHTING A THEME I WAS JUST
25 SOUNDING, WHICH IS THIS IDEA OF PEOPLE NEEDING TO HAVE

1 FINALITY. THAT REALLY SPEAKS MORE, I THINK, TO THE INTERESTS
2 OF THE SETTLING DEFENDANTS, THAT THEY DON'T WANT THERE TO BE A
3 FOREVER OPEN-ENDED PROCESS. EVEN IF THERE'S FINALITY IN TERMS
4 OF A FINAL APPROVAL ORDER --

5 THE COURT: RIGHT.

6 MS. DERMODY: -- THEY WANT THESE CLAIMS TO BE PAID
7 AND THE DEFENDANTS TO BE TRULY NEVER HAVING TO MONITOR THIS
8 CASE ANYMORE.

9 THE COURT: UM-HUM.

10 MS. DERMODY: AND WE RESPECT THAT AND APPRECIATE THAT
11 AND THAT'S A PART OF THE DOCUMENT.

12 IT BUILDS ENOUGH TIME THAT I THINK A LOT OF EVENTS IN THIS
13 CASE, IN TERMS OF LITIGATION WITH THE NON-SETTLING DEFENDANTS,
14 WILL BE HAPPENING. SO IF THERE IS ANY OPTIMISM ABOUT THE CASE
15 BEING RESOLVED, WE THINK THAT THAT SCHEDULE ALLOWS FOR THAT
16 OPTIMISM.

17 BUT IF IT DOESN'T HAPPEN, THEN THAT'S WHEN -- THAT'S THE
18 END DATE OF WHEN WE'LL FINALLY PAY THOSE CLAIMS.

19 THE COURT: YOU'RE SAYING NO LATER THAN JUNE 1, OR --

20 MS. DERMODY: CORRECT.

21 THE COURT: OKAY. THE OTHER OPTION IS TO JUST MOVE
22 FINAL APPROVAL TO ROUGHLY THAT TIMEFRAME VERSUS TRYING TO
23 SQUEEZE FINAL APPROVAL IN, YOU KNOW, IN JANUARY, FEBRUARY, OR
24 MARCH WHEN I DON'T KNOW HOW MANY CLASS MEMBERS ARE GOING TO
25 RECEIVE MONEY AND HOW MUCH THEY'RE GOING TO RECEIVE AND HOW

1 MUCH YOU'RE GOING TO REQUEST IN ATTORNEYS' FEES.

2 WHAT ABOUT JUST DELAYING FINAL APPROVAL UNTIL YOU CAN
3 EXPLORE IF THERE'S ANY MORE CLOSURE THAT YOU'RE GOING TO REACH
4 WITH ANYONE ELSE?

5 MS. DERMODY: AGAIN, YOUR HONOR, I THINK THERE ARE
6 DIFFERENT WAYS TO DO THIS.

7 THE COURT: UM-HUM.

8 MS. DERMODY: I DON'T THINK THAT'S, YOU KNOW, AN
9 IMPROPER WAY CERTAINLY.

10 I DO THINK THAT IN TERMS OF THE INTERESTS OF THE CLASS
11 MEMBERS AND THE INTERESTS OF THE DEFENDANTS, PEOPLE WANT TO GET
12 TO THE SETTLEMENT CERTIFICATION AND APPROVE SETTLEMENT, AN
13 EFFECTIVE DATE, SO THEY KNOW --

14 THE COURT: THE CLASS MEMBERS WANT TO GET THEIR
15 MONEY, OKAY.

16 MS. DERMODY: THEY DO.

17 THE COURT: YOU'RE SAYING LET'S HOLD OFF ON THAT,
18 LET'S DO ALL THE PAPERWORK AND THEN JUST SIT.

19 MS. DERMODY: BUT IT WON'T BE QUITE LIKE THAT, YOUR
20 HONOR, BECAUSE OF THE SCHEDULE WE'RE TALKING ABOUT. A FINAL
21 APPROVAL HEARING THAT'S GOING TO BE JANUARY OR FEBRUARY AND 30
22 DAYS FOR APPEAL, THAT EFFECTIVE DATE WON'T ACTUALLY RUN UNTIL
23 THE SPRING OF THIS COMING YEAR.

24 WE'RE TALKING ABOUT A VERY SMALL DELAY, BUT A DELAY THAT,
25 DURING THAT TIME, A LOT WILL HAVE HAPPENED AND SO THE CLASS

1 MEMBERS' INTERESTS WILL HAVE BEEN MUCH FURTHER ADVANCED BY US
2 AT LEAST SETTING THE SCHEDULE AND MEETING THESE BENCHMARKS THAN
3 IF WE JUST PUT IT OFF UNTIL JUNE AND STARTED THAT SCHEDULE, YOU
4 KNOW, ON A BLANK SLATE. THEY WOULD THEN NOT GET PAID UNTIL THE
5 END OF NEXT YEAR RATHER THAN THE MIDDLE OF NEXT YEAR.

6 THE COURT: BUT YOU'RE SAYING I SHOULD JUST APPROVE
7 THIS BLIND IN JANUARY OR FEBRUARY, NOT KNOWING IF WHAT YOUR LAW
8 FIRMS ARE GOING TO GET IS 5 MILLION OR YOU'RE GOING TO ASK FOR
9 12 MILLION.

10 I MEAN, THAT MAKES A REALLY LARGE DIFFERENCE, SO I DON'T
11 THINK I'M GOING TO MAKE THAT DECISION BLIND. I DON'T THINK
12 IT'S APPROPRIATE FOR ME TO DO SO. I -- YOU KNOW, YOU'RE
13 TELLING ME OTHER PEOPLE HAVE AND THAT'S FINE, BUT I'M NOT GOING
14 TO DO THAT.

15 MS. DERMODY: SO, YOUR HONOR, I THINK THERE'S SOME
16 OPTIONS.

17 THE COURT: THAT'S A BIG DIFFERENCE, WHETHER THERE'S
18 LESS THAN 8 MILLION FOR THE CLASS OR WHETHER THERE'S 15 MILLION
19 FOR THE CLASS.

20 MS. DERMODY: RIGHT. BUT YOU'RE RETAINING THE
21 JURISDICTION OVER THAT. THAT'S THE THING. THE POWER IS WITH
22 YOUR HONOR. IF YOU DISAGREE THAT THE AMOUNT OF MONEY THAT'S
23 BEING REQUESTED FOR ATTORNEYS' FEES ISN'T APPROPRIATE TO THE
24 BENEFIT, YOUR HONOR CAN DECIDE TO CUT BACK -- TO DENY THAT
25 REQUEST AND TO CUT BACK THE AMOUNT AWARDED. THAT'S THE

1 BENEFIT.

2 THE REASON WHY WE'RE TELLING THE CLASS MEMBERS THIS VERY
3 BIG NUMBER IS TO TELL THEM THE WORST POSSIBLE SCENARIO IN TERMS
4 OF HOW THE FUND MIGHT BE DEPLETED. IT'S GIVING THEM THE MOST
5 TRANSPARENCY AND TRYING NOT TO HIDE THE BALL AT ALL. MAYBE WE
6 WERE MAKING A MISTAKE, BUT WE WANTED TO TELL THEM THIS IS WHAT
7 COULD HAPPEN SO THAT THEY COULD OBJECT OR COMMENT AND RAISE
8 CONCERNS AND YOUR HONOR WOULD HAVE THE BENEFIT OF THAT.

9 EVEN WITH ALL OF THAT, YOUR HONOR COULD APPROVE THE
10 SETTLEMENT AS BEING AN APPROPRIATE FUND AND WITHHOLDING
11 APPROVAL OF ANY ATTORNEYS' FEES AND DEFERRING THAT TO A LATER,
12 A LATER STAGE. AND AGAIN, AT THAT LATER STAGE, YOUR HONOR
13 COULD DECIDE, YOU KNOW, IT'S NOT GOING TO BE A THIRD, IT'S
14 GOING TO BE SOMETHING ELSE.

15 THAT'S -- I THINK THAT'S THE BENEFIT OF THAT IS THAT YOU
16 DON'T HAVE TO APPROVE IT WITH AN OPEN-ENDED, UNKNOWN
17 POSSIBILITY THAT THE FUND WILL BE TOO SMALL. YOU WOULD CONTROL
18 THAT.

19 THE COURT: WHAT DO YOU EXPECT THE TOTAL
20 ADMINISTRATIVE COSTS TO BE? I KNOW YOU JUST HAVE THE 100,000
21 IN THE SETTLEMENT AGREEMENT, BUT WHAT DO YOU EXPECT IT TO BE?
22 AND ARE YOU INCLUDING IN THAT COSTS IF ANY OTHER DEFENDANTS
23 ALSO SETTLE, OR IS THAT SOLELY FOR THE SETTLEMENT AGREEMENTS
24 THAT ARE PENDING TODAY?

25 MS. DERMODY: SOLELY FOR THE SETTLEMENT AGREEMENTS

1 PENDING TODAY.

2 THE COURT: UM-HUM.

3 MS. DERMODY: AND I THINK IF THERE WERE OTHER
4 SETTLEMENTS, IT WOULD BE AN ECONOMY OF SCALE, THAT IT WOULDN'T
5 REALLY TO ANY DEGREE -- I MEAN, MAYBE AT THE MARGINS --
6 INCREASE THE COSTS OF THE SETTLEMENT, PARTICULARLY IF THERE'S
7 ONE NOTICE THAT GOES OUT. THE COST OF MAILING ITSELF IS A
8 FAIRLY LARGE NUMBER WITHIN SETTLEMENT ADMINISTRATION, BUT IF
9 YOU HAVE ONE NOTICE GOING OUT, THAT PRETTY MUCH IS THE BIGGEST
10 COST.

11 WE DID RFP'S WITH FIVE OR SIX CLAIMS ADMINISTRATORS, VERY
12 GOOD ONES THAT ARE KNOWN AND DO A VERY GOOD JOB, AND WE PICKED
13 THE ONE THAT HAD THE BEST BENEFIT AT THE LOWEST COST AND I
14 THINK IT WAS A COUPLE HUNDRED THOUSAND DOLLARS FOR
15 ADMINISTRATION, MAYBE A LITTLE BIT MORE.

16 THE COURT: SO THAT'S WHAT YOU'RE EXPECTING?

17 MS. DERMODY: YES.

18 THE COURT: WHAT? GIVE ME A NUMBER.

19 MS. DERMODY: YOUR HONOR, IT'S BETWEEN 2- AND
20 \$300,000. I DON'T HAVE THE RFP NUMBERS COMMITTED TO MEMORY, IT
21 WAS NOW SO MANY MONTHS AGO. BUT IT'S IN THAT RANGE.

22 THE COURT: OKAY. AND JUST FOR THESE SETTLEMENTS?

23 MS. DERMODY: YES. BUT, AGAIN, BECAUSE THE CLASS IS
24 THE CLASS, IF THERE WERE ADDITIONAL SETTLEMENTS, YOU WOULD
25 HAVE -- IF YOU DIDN'T HAVE THE MAILING ALL AT THE SAME TIME,

1 YOU WOULD HAVE ADDITIONAL MAILINGS THAT WOULD GO OUT.

2 BUT OTHERWISE THERE WOULD BE ONE CHECK ISSUED, FOR
3 INSTANCE, AND THERE'S ONE WEBSITE. YOU UPLOAD THE DATA TO THE
4 WEBSITE ONCE FOR THE WHOLE CLASS, AND IT'S THE SAME PLAN OF
5 ALLOCATION PRESUMABLY ACROSS DIFFERENT SETTLEMENTS.

6 SO YOU REALLY DO HAVE A LOT OF BENEFIT FROM THE FOOTWORK
7 DONE IN THE FIRST SETTLEMENT.

8 THE COURT: OKAY. LET ME HEAR FROM MS. HENN AND
9 MR. STEWART.

10 WHAT BENEFIT IS THERE TO YOUR CLIENTS TO HAVE THE TIMING
11 DONE THIS WAY OF HAVING A FINAL APPROVAL HEARING IN JANUARY OR
12 FEBRUARY, BUT THEN NOT REALLY DECIDING HOW MUCH MONEY CLASS
13 MEMBERS WOULD RECEIVE AND HOW MUCH MONEY THE LAW FIRMS WOULD
14 RECEIVE UNTIL A LATER POINT?

15 MS. HENN: YOUR HONOR, SPEAKING FOR PIXAR AND
16 LUCASFILM, WE DON'T TAKE A POSITION ON ANY OF THE ISSUES THAT
17 AFFECT THE CLASS MEMBERS.

18 I THINK MS. DERMODY STATED VERY WELL THAT WE DO HAVE AN
19 INTEREST IN FINALITY, AND I THINK THAT INTEREST IS EMBODIED IN
20 THE ALLOCATION PLAN, WHICH WAS THE DATE THAT YOUR HONOR POINTED
21 OUT, THE JUNE 1ST, 2014, DATE.

22 WHAT THAT SOMEWHAT VAGUE SENTENCE MEANT TO CONVEY IS THAT
23 DISTRIBUTION FROM THE EXISTING SETTLEMENTS COULD BE DELAYED TO
24 ACCOMMODATE OTHER SETTLEMENTS, MEANING THAT A DISTRIBUTION
25 COULD HAPPEN AT THE SAME TIME AS OTHER SETTLEMENTS IF THOSE

1 SETTLEMENTS ARE REACHED BEFORE JUNE 1ST, 2014.

2 IT WAS NOT -- MY UNDERSTANDING WAS THAT IT MEANT THE
3 ACTUAL DISTRIBUTION WOULD HAPPEN BY JUNE 1ST, 2014.

4 THE COURT: OKAY. I'M SORRY. YOU'RE GOING TO HAVE
5 TO REPEAT THAT. SO YOU'RE SAYING IF ANY OTHER DEFENDANTS
6 SETTLE BY JUNE 1ST OF 2014, THEN THE DISTRIBUTIONS CAN BE
7 DELAYED FURTHER UNTIL THEY CAN BE INCORPORATED INTO THE
8 DISTRIBUTIONS?

9 MS. HENN: THAT'S CORRECT, YOUR HONOR. THAT WAS THE
10 INTENTION OF THAT LANGUAGE.

11 THE COURT: SO THEN THE PAYMENTS ARE PROBABLY NOT
12 GOING TO GO OUT UNTIL THE END OF 2014 THEN IF YOU ASSUME THAT
13 SETTLEMENT WOULD ALSO HAVE TO GO THROUGH PRELIMINARY APPROVAL
14 AND THE NOTICE WOULD HAVE TO GO OUT AND CLAIM FORMS WOULD HAVE
15 TO BE SUBMITTED AND CLAIM FORMS WOULD HAVE TO BE EVALUATED TO
16 MAKE SURE THE PAYMENT AMOUNTS WERE CORRECT, ET CETERA.

17 MS. DERMODY: IF THERE WAS ANOTHER SETTLEMENT, YOUR
18 HONOR.

19 IF THERE WAS NOT ANOTHER SETTLEMENT, THEN ON JUNE 1ST
20 THERE WOULD START TO BE THE PROCESS OF ISSUING THOSE CHECKS.

21 SO IT'S AN OUTER EDGE OF WHEN THAT WOULD HAPPEN BUT FOR
22 OTHER SETTLEMENTS THAT WOULD BENEFIT THE CLASS MEMBERS.

23 THE COURT: OKAY. DOES MR. STEWART WANT TO BE HEARD
24 ON BEHALF OF INTUIT?

25 MR. STEWART: THANK YOU, YOUR HONOR.

1 AS WITH PIXAR AND LUCASFILM, WE'RE NOT TAKING A POSITION
2 ON THE AWARD OF FEES OR COSTS TO THE PLAINTIFFS. THAT'S A
3 MATTER BETWEEN THE PLAINTIFFS AND THE CLASS UNDER YOUR
4 JURISDICTION, YOUR HONOR, TO ENSURE THAT THE SETTLEMENT IS FAIR
5 AND REASONABLE.

6 AND WITH RESPECT TO TIMING, WE, FRANKLY, DON'T HAVE A
7 STRONG POSITION ON THAT AS WELL. I THINK THAT'S AN ISSUE OF
8 PRIMARY CONCERN TO THE PLAINTIFFS.

9 THE COURT: UM-HUM. OKAY. ALL RIGHT. WELL, I HAVE
10 SOME SPECIFIC QUESTIONS ABOUT THE NOTICE AND THE CLAIM FORM,
11 BUT BEFORE I DO THAT, LET'S HANDLE THE DISPUTES WITH THE
12 NON-SETTLING DEFENDANTS.

13 I'M GOING TO REQUIRE THAT JOB TITLES AND SALARY
14 INFORMATION BE PROVIDED BECAUSE OTHERWISE IT'S GOING TO WASTE A
15 LOT OF CLAIMS ADMINISTRATION TIME AND COST TO TRY TO SETTLE ALL
16 THOSE AMOUNTS AND TIMES WITH CLASS MEMBERS WITHOUT THE BENEFIT
17 OF MORE DEFINITIVE DATA FROM THE EMPLOYERS. SO THAT OBJECTION
18 IS DENIED.

19 I DO WANT TO TALK ABOUT THE SOCIAL SECURITY NUMBERS.
20 FIRST I WANT TO ASK, WHAT SECURITY MEASURES DOES THE CLAIMS
21 ADMINISTRATOR, HEFFLER, HAVE? BECAUSE I DO NOT WANT TO SEE,
22 YOU KNOW, A NEWSPAPER ARTICLE THAT ALL THIS WAS ON SOMEBODY'S
23 LAPTOP WHICH WAS STOLEN OUT OF HIS CAR OR LEFT AT THE COFFEE
24 SHOP AND STOLEN. I DON'T WANT THAT TO BE THIS CASE.

25 MS. DERMODY: YEAH. YOU AND US BOTH, YOUR HONOR. WE

1 DON'T WANT THAT, EITHER.

2 I MEAN, THEY HAVE THEIR OWN COMPANY WITH THEIR OWN DATA
3 SECURITY MEASURES AND THEY COULD PROVIDE THE COURT WITH A
4 DECLARATION IF NEED BE. I'M SURE THEY'D BE HAPPY TO WORK WITH
5 ALL OF THE DEFENDANTS TO HAVE AN APPROPRIATE SECURITY AGREEMENT
6 FOR THAT MATERIAL.

7 I THINK EVERYONE SHARES AN INTEREST IN MAKING SURE THAT
8 THE CLASS MEMBER FINANCIAL DATA IS SECURE.

9 SO ALL I CAN SAY IS THAT THIS IS THE KIND OF INFORMATION
10 THAT CLAIMS ADMINISTRATORS, LIKE HEFFLER, ROUTINELY RECEIVE AND
11 ROUTINELY PROTECT, AND WE HAVE NO REASON TO THINK, AND NO ONE
12 HAS RAISED ANY REASON FOR US TO THINK, THAT THERE WILL BE ANY
13 CONCERN HERE. I'M NOT AWARE OF ANY ISSUE IN THAT REGARD.

14 BUT IF THERE ARE OTHER MEASURES TO GIVE EVERYONE A LEVEL
15 OF CONFIDENCE, WE WOULD WELCOME THAT AS WELL.

16 THE COURT: WHAT -- I WAS NOT AS PERSUADED BY YOUR
17 REASON FOR NEEDING THE SOCIAL SECURITY NUMBERS, AND PERHAPS
18 WOULD BE MORE PERSUADED IF YOU FELT THAT YOU NEEDED,
19 EFFECTIVELY, A PASSWORD FOR A CLASS MEMBER TO USE TO BE ABLE TO
20 VERIFY THEIR INFORMATION, AND THAT THE LETTER TO THE CLASS
21 MEMBER NOT HAVE TO INCLUDE THAT PASSWORD.

22 I MEAN, I DON'T KNOW. TELL ME -- TELL ME WHAT YOUR
23 CONCERN IS ABOUT GETTING THE SOCIAL SECURITY NUMBER FROM THE
24 CLAIMANT WHEN HE OR SHE FILLS OUT THE CLAIM FORM, BECAUSE
25 YOU'RE NOT GOING TO HAVE THE TAX CONSIDERATION IF NO CLAIM FORM

1 IS SUBMITTED.

2 MS. DERMODY: OKAY, YOUR HONOR.

3 THE COURT: SO WHAT'S YOUR --

4 MS. DERMODY: THERE'S THREE PLACES WHERE SOCIALS COME
5 INTO PLAY IN THE ADMINISTRATION PROCESS. ONE IS IN MAILING THE
6 NOTICE ITSELF. SO WHEN ENVELOPES ARE RETURNED AND THERE'S NOT
7 AN APPROPRIATE SKIP TRACING AVAILABLE, HEFFLER AND OTHER CLAIMS
8 ADMINISTRATORS GO TO THE SOCIAL SECURITY NUMBER TO FIND EXACTLY
9 WHERE PEOPLE ARE, BECAUSE PEOPLE TEND TO BE RE-EMPLOYED
10 SOMEWHERE AND THEIR SOCIAL IDENTIFIES THEM.

11 SO IT'S A VERY SURE FIRE WAY TO GET NOTICE TO PEOPLE THAT
12 ARE -- TO PEOPLE THAT ARE EMPLOYED, SUCH AS PEOPLE THAT ARE IN
13 THIS CLASS.

14 THE SECOND PART OF THIS -- AND HEFFLER HAS GIVEN US A
15 LITTLE BIT OF A TUTORIAL ON THIS -- IS THAT WHEN YOU HAVE A
16 PLAN OF ALLOCATION WHICH HAS POPULATED DATA FROM THE EMPLOYER,
17 SO HERE --

18 THE COURT: YEAH.

19 MS. DERMODY: -- YOU HAVE THEIR SALARY AND CLASS
20 POSITION, YOU WANT TO HAVE AN EASY WAY FOR THE CLASS MEMBER TO
21 REVIEW THAT DATA TO SEE IF THERE'S SOME OBVIOUS ERROR.

22 SO LET'S SAY WHEN A CLASS MEMBER GOES ON-LINE AND THEY
23 LOCATE THEIR JOB HISTORY AND THEY SEE THAT THEY'RE MISSING A
24 CLASS POSITION FROM ONE OF THE DEFENDANTS, MAYBE THEY
25 TRANSFERRED JOBS AND ONE OF THE DEFENDANTS JUST DIDN'T CAPTURE

1 THEM, THEY CAN THEN TELL THE CLAIMS ADMINISTRATOR, "I WAS
2 EMPLOYED AT THIS COMPANY FROM THESE DATES AND THIS SALARY, IT
3 SHOULD BE THERE," AND THE CLAIMS ADMINISTRATORS CAN GO AND
4 COLLECT THAT WITH THE DEFENDANT.

5 THE ONLY WAY THAT THEY CAN SAFELY GET INTO AN ON-LINE JOB
6 FIELD LIKE THAT IS THROUGH A PASSWORD, AND HAVING THEIR OWN
7 SOCIAL SECURITY NUMBER BE A PASSWORD IS PROBABLY THE BEST WAY
8 TO ENSURE THAT IT IS SECURE, BECAUSE THERE'S NO OTHER PASSWORD
9 THAT'S PRIVATE TO A PERSON THAT'S AS WELL SAFEGUARDED AS ONE'S
10 SOCIAL SECURITY NUMBER.

11 ONE WOULDN'T WANT TO SEND A PASSWORD IN THE MAIL TO
12 SOMEONE BECAUSE THAT WOULD ESSENTIALLY BE GIVING AN OPPORTUNITY
13 FOR MISCHIEF THROUGH THE MAIL IF ANYONE OPENED UP THAT MAIL.

14 SAME IS TRUE FOR E-MAIL. AN E-MAIL SENDING SOMEONE A
15 PASSWORD COULD BE VIEWED BY SOMEONE ELSE.

16 AND AGAIN, HEFFLER DOESN'T WANT TO BE ON THE WRONG SIDE OF
17 THIS DATA SECURITY ISSUE. THEY WANT TO TRY TO GIVE PEOPLE A
18 CHANCE TO ACCESS THAT MATERIAL IN A WAY THAT'S SAFE FOR THAT
19 PERSON.

20 THE THIRD WAY, AS YOUR HONOR HAS ALREADY ALLUDED TO, IS IN
21 THE CLAIMS PROCESS. BECAUSE THESE AREN'T EMPLOYEES, BECAUSE
22 THESE ARE, IN PART, TAXABLE WAGES AND THERE WILL BE WITHHOLDING
23 REQUIRED, THE CLAIMS ADMINISTRATOR HAS TO DO WITHHOLDING WITH
24 EVERYONE'S SOCIAL SECURITY NUMBER AS PART OF THE CLAIMS
25 PROCESS.

1 SO RATHER THAN HAVE PEOPLE SUBMIT INDIVIDUAL SOCIALS FOR
2 THESE INDIVIDUAL CLAIMS, WHICH ITSELF SEEKS LIKE MUCH MORE
3 PRONE TO A SECURITY PROBLEM THAN JUST HAVING A DATA DUMP WHERE
4 EVERYTHING IS POPULATED IN ONE DATA FIELD, IT SEEKS LIKE IT'S
5 MUCH BETTER FOR THE CLASS, MUCH MORE EFFICIENT, IT'S ALREADY
6 POSSESSED BY THE DEFENDANTS, AND IT'S SOMETHING WHICH WE
7 THOUGHT WE SHOULD ALERT YOUR HONOR IS SO ROUTINE IN CLASS
8 SETTLEMENTS THAT WE WERE SURPRISED IT CAME UP.

9 WE SHARED A COUPLE OF THE SETTLEMENT PRELIMINARY APPROVAL
10 ORDERS FROM THIS DISTRICT FROM JUDGE WARE, JUDGE WILKEN, FROM
11 YOUR HONOR BASICALLY APPROVING THE ORDER OF A SOCIAL SECURITY
12 NUMBER AND OTHER IDENTIFYING INFORMATION ABOUT CLASS MEMBERS
13 WHO ARE EMPLOYEES TO BE GIVEN TO A CLAIMS ADMINISTRATOR.

14 I THINK ALL THOSE CASES WE GAVE YOU WERE TECH EMPLOYEES,
15 TOO. MAYBE ONE WASN'T.

16 BUT THIS COMES UP AND WE THINK IT'S THE ONLY WAY THAT
17 MAKES THE MOST -- IT MAKES THE MOST SENSE AND IT'S THE ONLY WAY
18 THAT ENSURES THE MOST DATA SECURITY FOR THE MATERIAL, AND IT
19 WAS THE ONLY WAY WE COULD THINK OF -- AND WE DID TALK TO
20 DEFENDANTS, THE NON-SETTLING DEFENDANTS ABOUT WHETHER THEY
21 COULD COME UP WITH AN ALTERNATIVE WAY WHERE IF SOMEONE CAN
22 ACCESS PRIVATE INFORMATION THAT WAS BETTER THAN THIS WAY,
23 BECAUSE WE FIGURED THESE ARE FOLKS THAT REALLY, REALLY
24 UNDERSTAND THE INFORMATION TECHNOLOGY WORLD, IF ANYONE COULD
25 COME UP WITH AN ALTERNATIVE WAY, IT WOULD BE THE NON-SETTLING

1 DEFENDANTS, AND WE WEREN'T ABLE TO COME UP WITH ANYTHING OTHER
2 THAN WHAT WE PROPOSED.

3 SO FOR ALL THOSE REASONS, YOUR HONOR, WE THINK THAT IT
4 MAKES SENSE TO HAVE THE SOCIAL SECURITY NUMBERS BE PART OF THE
5 DATA DUMP WITH THE OTHER MATERIAL.

6 THE COURT: LET ME ASK, I WAS UNCLEAR ON THE
7 NON-SETTLING DEFENDANTS' POSITION.

8 MR. VAN NEST: YOUR HONOR --

9 THE COURT: YOU KNOW, IN THE PIONEER ELECTRONICS
10 CASE, THE CALIFORNIA SUPREME COURT ACTUALLY FOUND THE NEED FOR
11 DISCLOSURE TO NOTIFY THE CLASS OUTWEIGHED THE PRIVACY
12 INTERESTS, SO I ACTUALLY THOUGHT THIS CASE WAS NOT IN YOUR
13 FAVOR AND THAT WAS ACTUALLY IN THE PLAINTIFFS' FAVOR FOR
14 DISCLOSURE.

15 MR. VAN NEST: I THINK PIONEER POINTS OUT HOW
16 SENSITIVE SOCIAL SECURITY NUMBER DATA IS AND THE REASON WHY
17 MANY COURTS HAVE SAID THAT'S NOT GOING TO BE REQUIRED UP FRONT,
18 IT'S GOING TO BE SOMETHING THAT, IF THERE ARE A LOT OF RETURNED
19 ENVELOPES, OR IF THERE'S A PROBLEM FINDING CLASS MEMBERS, WE
20 CAN DEAL WITH THAT ON A BY -- ON A PER EMPLOYEE BASIS.

21 SO THE CASES THAT YOU WERE CITED BY THE PLAINTIFFS, YOUR
22 HONOR, ARE TYPICALLY CASES WHERE THE CLASS, FOR EXAMPLE, ARE
23 ALL FOLKS THAT THE DEFENDANTS HAVE A RELATIONSHIP WITH.

24 HERE YOU'VE GOT, AS THEY'VE ADMITTED, 95 PERCENT OF THE
25 EMPLOYEES, FROM A SALARY STANDPOINT, ARE PEOPLE EMPLOYED BY THE

1 NON-SETTLING DEFENDANTS. SO WE'VE GOT A LARGE GROUP OF PEOPLE
2 TO WHOM WE HAVE SOME PRIVACY OBLIGATIONS.

3 OUR POINT IS SIMPLE. THE ADMINISTRATOR CAN FIND A WAY TO
4 CREATE A PASSWORD. WE'VE ALREADY AGREED TO GIVE ADDRESS DATA
5 AND E-MAIL ADDRESS DATA. THEY'RE GOING TO HAVE NOW THE SALARY
6 DATA. THEY'RE GOING TO HAVE THE TITLE DATA.

7 LET THE EMPLOYEE DECIDE WHETHER HE OR SHE WANTS TO MAKE A
8 CLAIM. IF THEY DO, THEY CAN THEN EXPOSE THEIR SOCIAL SECURITY
9 NUMBER AT THAT POINT.

10 IF THERE ARE LARGE NUMBERS OF PEOPLE THAT CAN'T BE FOUND,
11 THEN WE CAN CERTAINLY DEAL WITH THAT WITH A SUPPLEMENTAL ORDER
12 TO TURN OVER THOSE SOCIAL SECURITY NUMBERS.

13 BUT TO DO IT FOR -- WE'RE TALKING ABOUT 60,000 PEOPLE
14 POTENTIALLY HERE, AT LEAST. THAT WAS THE REQUEST IN THE CLASS
15 CERT PAPERS. IT'S EXCESSIVE.

16 SO OUR POINT IS SIMPLY, WITH THE ADDRESS DATA WE'RE
17 GIVING, WHICH IS NOT ONLY PHYSICAL ADDRESSES, BUT E-MAIL
18 ADDRESSES, THEY OUGHT TO BE ABLE TO REACH THE VAST MAJORITY OF
19 PEOPLE.

20 IF THERE ARE SOME FOLKS THEY DON'T REACH, SO BE IT. WE
21 CAN PROVIDE ADDITIONAL INFORMATION THEN.

22 THAT'S A PERFECTLY REASONABLE WAY TO DO IT. IT PUTS THE
23 EMPLOYEE IN CHARGE, THE CLASS MEMBER IN CHARGE OF DECIDING
24 WHETHER HE OR SHE WANTS THAT INFORMATION MADE PUBLIC.

25 AND WE'RE A LOT MORE COMFORTABLE WITH THAT, PARTICULARLY

1 THE NON-SETTLING DEFENDANTS WHO HAVEN'T AGREED TO ANYTHING AT
2 THIS POINT.

3 THE COURT: SO ONE OF THE PLAINTIFFS' CONCERNS, WHICH
4 I THINK IS LEGITIMATE, IS THAT, YOU KNOW, CURRENT EMPLOYEES DO
5 NOT IN ANY WAY WANT TO BE RETALIATED AGAINST OR HAVE THE FEAR
6 OF RETALIATION IF THEY DO SUBMIT A CLAIM.

7 IS THAT AT ALL IN ANY WAY WHY YOU WANT THIS INFORMATION UP
8 FRONT? OR DOES THAT NOT MATTER?

9 MS. DERMODY: ABSOLUTELY, YOUR HONOR.

10 THE COURT: WHAT'S THE SITUATION?

11 MS. DERMODY: THANK YOU, YES. I MEAN, ONE OF OUR
12 GREATEST CONCERNS IS THAT THE CLAIMS PROCESS BE TOTALLY
13 CONFIDENTIAL, THAT THE CLAIMANTS NOT BE EXPOSED BACK TO THEIR
14 EMPLOYERS, BECAUSE IF THE CLAIMS PROCESSOR HAS TO FOLLOW UP AND
15 ASK QUESTIONS ABOUT TITLE OR ASK FOR SOCIAL OR ANYTHING LIKE
16 THAT, WE'RE WORRIED ABOUT THE IDEA THAT, "OH, WE COULDN'T FIND
17 SOME PEOPLE. WE'LL JUST TURN OVER THEIR SOCIALS THEN."

18 THAT MAKES THE CLAIMS PROCESS SORT OF HAVE THESE HOLES
19 WHERE PEOPLE WORRY, "WOW, I'M GOING TO BE KNOWN TO MY EMPLOYER
20 FOR BEING PART OF THIS PROCESS."

21 SO WE THINK THAT TO THE EXTENT THERE ARE COMPETING
22 INTERESTS AND THERE'S A BALANCING THAT HAS TO BE UNDERTAKEN
23 HERE, THE FOCUS OF THE BALANCING IS THE CLASS MEMBERS. IT'S
24 THE FOCUS OF DEFENDANTS' BALANCING AND OURS. THEY'RE TALKING
25 ABOUT PRIVACY AND WE'RE TALKING ABOUT PRIVACY PLUS EFFICIENCY,

1 CONFIDENTIALITY, SECURITY, ALL OF THESE THINGS, AND WE THINK
2 THAT THE OVERWHELMING BALANCE IS IN FAVOR OF HAVING THE
3 DEFENDANTS JUST TURN OVER THE SOCIALS, THAT THAT'S IN THE CLASS
4 MEMBERS' BEST INTERESTS RATHER THAN PUT IT ON THE CLASS MEMBERS
5 AND NOW OPEN UP A CLAIMS PROCESS TO HAVE THESE DIFFERENT PARTS
6 OF IT THAT AREN'T RUNNING EFFICIENTLY AND THAT REQUIRE EITHER
7 THE DEFENDANTS TO BE INVOLVED IN SOME WAY OR THE CLASS MEMBERS
8 TO BE SENDING THINGS THAT ARE VERY, VERY CONFIDENTIAL THROUGH
9 THE MAIL THAT WE DON'T WANT THEM TO BE SENDING.

10 THE COURT: HOW DO YOU RESPOND TO MR. VAN NEST'S
11 POINT, THAT THE EXAMPLES THAT YOU GAVE, INCLUDING BUCCELLATO,
12 WHICH WAS A CASE BEFORE ME, THAT THOSE DID INVOLVE EMPLOYEES OF
13 THE SETTLING DEFENDANT?

14 MS. DERMODY: I THINK THIS IS SORT OF MIXING A LOT OF
15 APPLES AND ORANGES, PROBABLY BECAUSE THIS IS SUCH A STRANGE
16 SCENARIO WE HAVE HERE.

17 THE COURT: UM-HUM.

18 MS. DERMODY: IN THE TYPICAL EMPLOYMENT CLASS ACTION
19 WHERE YOU'RE DEALING WITH EMPLOYEE COMPENSATION, YOU'VE GOT
20 ADVERSARIES, EMPLOYER AND EMPLOYEE ON BOTH SIDES, AND TYPICALLY
21 BEFORE A CLASS IS CERTIFIED, CERTAIN TYPES OF MATERIAL ARE NOT
22 PRODUCED. SO SOMETIMES THE NAMES OF PEOPLE OR SOCIAL SECURITY
23 NUMBERS ARE NOT PRODUCED PRIOR TO CERTIFICATION, WHERE ALL THE
24 REST OF THE EMPLOYMENT HISTORY AND ALL OF THAT IS, SO JUST WHAT
25 HAPPENED IN THIS CASE ACTUALLY.

1 HERE THEN WE'RE HAVING A CERTIFICATION -- IT'S IN THE
2 SETTLEMENT CONTEXT, BUT IT'S A CERTIFICATION -- AND IN THE
3 LITIGATION CONTEXT WHEN YOU HAVE A CERTIFICATION, NAMES AND
4 CONTACT INFORMATION AND ASSOCIATED DATA ARE TYPICALLY ALWAYS
5 PRODUCED, PRODUCED SO FREQUENTLY THAT IT'S HARD TO FIND A CASE
6 WHERE THAT DISCOVERY DISPUTE IS EVEN, IS EVEN ARGUED BECAUSE
7 IT'S SO EXPECTED.

8 IN THE SETTLEMENT CONTEXT WHEN YOU'RE DEALING WITH
9 SERVICING CLAIMS, IT IS SO RECOGNIZED AS AN EFFICIENCY TO THE
10 SETTLEMENT PROCESS THAT EVERY EMPLOYER TURNS OVER SOCIALS, NO
11 MATTER HOW CONCERNED ABOUT DATA, PRIVACY, OR ANYTHING ELSE,
12 BECAUSE THEY RECOGNIZE, IN THE SETTLEMENT CONTEXT, THE MOST
13 EFFECTIVE WAY TO GET NOTICE TO THE CLASS AND TO MAKE SURE THAT
14 THE TAX OBLIGATIONS ARE MET IS TO HAVE THE SOCIALS PROVIDED TO
15 THE CLAIMS ADMINISTRATOR.

16 WE HAVE SORT OF AN AMALGAM OF ALL OF THOSE SCENARIOS HERE,
17 BUT I DON'T THINK IT IS THE RIGHT COMPARISON TO SAY, "OH, WE
18 DIDN'T SETTLE ON BEHALF OF SOME OF THESE PEOPLE, SO THEREFORE,
19 WE SHOULDN'T HAVE TO PROVIDE THIS INFORMATION."

20 WE HAVE, YOU KNOW, A -- THERE'S GOING TO BE A CERTIFIED
21 SETTLEMENT CLASS WHERE WE ARE ENTITLED TO GET THE INFORMATION
22 ABOUT THE CLASS MEMBERS IN ORDER TO EFFECTUATE THE SETTLEMENT.

23 I THINK THAT'S THE SCENARIO THAT WE'RE IN, AND THE BEST
24 GUIDEPOST FOR WHAT MAKES THE MOST SENSE IN FAVOR OF THE CLASS
25 MEMBERS ARE THE ORDERS THAT WE GAVE TO YOUR HONOR, INCLUDING

1 THE ONE YOU JUST MENTIONED, YOUR OWN ORDER IN BUCCELLATO.

2 MR. VAN NEST: YOUR HONOR?

3 THE COURT: YES.

4 MR. VAN NEST: TWO THINGS. WE CITED A NUMBER OF
5 CASES THAT TAKE A VERY REASONABLE APPROACH, WHICH IS IF THEY
6 NEED MORE HELP ON PEOPLE THAT DIDN'T RESPOND, THEY CAN GET IT.

7 THERE'S NO ISSUE OF RETALIATION HERE OR INFORMATION.

8 IF THE CLAIMS ADMINISTRATOR NEEDS FOLLOW-UP, THEY FOLLOW
9 UP WITH THE CLAIMANT, NOT WITH US, BECAUSE THE CLAIMANT HAS
10 RESPONDED.

11 THE ONLY CONDITION, OR SITUATION, UNDER WHICH WE WOULD BE
12 CONSULTED IS, "HEY, WE GOT A RETURN ENVELOPE, THE ADDRESS IS
13 WRONG, THE E-MAIL ADDRESS IS WRONG, AND THE PERSONAL E-MAIL
14 ADDRESS IS WRONG. WE NEED A SOCIAL."

15 SO, FINE, THEY GET A SOCIAL.

16 OTHERWISE WE'RE DUMPING -- AND THEY'RE THE ONES THAT HAVE
17 USED "DUMP," "DATA DUMP" SEVERAL TIMES NOW -- 60,000 SOCIAL
18 SECURITY NUMBERS OUT THERE. I DON'T CARE WHAT PROMISES ANYBODY
19 MAKES ABOUT CONFIDENTIALITY, THAT'S JUST NOT RIGHT.

20 AND THE CASES WE'VE CITED ARE CASES WHERE THIS ISSUE CAME
21 UP AND COURTS SAID, "LET'S TAKE A MORE PRACTICAL APPROACH.
22 GIVE THEM THE ADDRESSES, GIVE THEM THE E-MAILS, GET IT OUT
23 THERE. IF THERE'S SOME THAT ARE NOT RETURNED AND NOT RESPONDED
24 TO BECAUSE THE ADDRESS IS WRONG, FINE, GO BACK IN AND WE'LL
25 PROVIDE ADDITIONAL SOCIAL SECURITY NUMBERS FOR THOSE PEOPLE."

1 BUT THAT'S A LOT BETTER AND A MORE TAILORED WAY TO DEAL
2 WITH THIS THAN JUST, QUOTE, "DUMPING," UNQUOTE, 60,000-SOME
3 SOCIAL SECURITY NUMBERS OUT TO THE MARKET WITH THE RISKS WE'RE
4 ALL FAMILIAR WITH THERE.

5 SO I DON'T THINK OUR APPROACH IS ONE BIT UNREASONABLE. I
6 THINK THEIR APPROACH IS UNREASONABLE.

7 AND I DON'T THINK THERE'S ANY CASE WHERE A DEFENDANT
8 DIDN'T JUST FLAT OUT AGREE TO DO THIS WHERE THE COURT FLAT OUT
9 ORDERED IT WITHOUT AT LEAST GOING THROUGH SOME STEPS FIRST TO
10 TRY TO GET NOTICE TO THE CLASS.

11 THE COURT: WELL, I DID IT IN BUCELLATO, SO I DON'T
12 THINK IT'S ACCURATE TO SAY NO COURT HAS DONE IT.

13 MR. VAN NEST: WELL, YOU HAD AGREEMENT THERE, THOUGH.
14 THAT'S MY POINT. IN OTHER WORDS, THE DEFENDANT THERE AGREED.

15 BUT WHAT I'M SUGGESTING -- THIS IS UNUSUAL BECAUSE YOU'VE
16 GOT, AS THEY'VE CONCEDED, SOME 95 PERCENT OF THIS GROUP, AT
17 LEAST MEASURED BY COMPENSATION, IS -- ARE PEOPLE EMPLOYED BY
18 NON-SETTLING DEFENDANTS, SO THAT'S THE VAST MAJORITY OF THE
19 CLASS. IT'S NOT SOMEBODY WHOSE EMPLOYER HAS AGREED TO A
20 SETTLEMENT.

21 ALL WE'RE SAYING IS WE UNDERSTAND WE NEED TO COOPERATE AND
22 WE UNDERSTAND WE NEED TO GIVE NAMES, ADDRESS, E-MAIL ADDRESS,
23 PERSONAL E-MAIL, WHATEVER WE HAVE ADDRESS-WISE.

24 THE COURT: SO WHAT ARE YOU SUGGESTING BE THE
25 PASSWORD THEN? YOU WANT THE CLAIMS ADMINISTRATOR TO SEND OUT

1 TWO NOTICES TO EVERY CLASS MEMBER SAYING "HERE'S THE WEBSITE TO
2 ACCESS, HERE'S YOUR CLAIM FORM NUMBER," AND THEN SEND A SECOND
3 LETTER OUT SAYING, "HERE'S YOUR PASSWORD THAT YOU USE IN
4 CONJUNCTION WITH THE CLAIM FORM NUMBER TO ACCESS YOUR
5 INFORMATION"?

6 MR. VAN NEST: I'M SURE THAT THEY CAN FIGURE THAT
7 OUT. IN MANY OF THESE INSTANCES THE CLAIMANT CHOOSES A
8 PASSWORD AND SUBMITS THAT TO THE SYSTEM.

9 SO, I MEAN, THE CREATION OF A PASSWORD -- IT CAN'T BE THE
10 CASE IN THIS DAY AND AGE THAT THE ONLY POSSIBLE PASSWORD
11 SOMEONE COULD USE IS THEIR SOCIAL. WE KNOW THAT'S NOT TRUE.

12 THE CLAIMS ADMINISTRATORS ARE PAID TO FIGURE OUT HOW TO DO
13 THIS IN A SECURE WAY. THEY CAN HAVE A CLAIMANT ELECT A
14 PASSWORD. THEY CAN SEND OUT A CODED PASSWORD. THERE'S A
15 MILLION WAYS TO DO IT THAT DON'T INVOLVE THE SOCIAL.

16 IT CAN'T POSSIBLY BE THAT THAT'S THE ONLY WAY TO DO IT,
17 PARTICULARLY WHERE YOU'RE TALKING ABOUT SO MANY PEOPLE IN THIS
18 GROUP AND SO MANY SOCIALS.

19 THE COURT: NOW, FOR THE INFORMATION THAT YOU HAVE
20 AGREED TO PROVIDE, ARE YOU STILL INSISTING THAT THE COSTS BE
21 PAID BY THE PLAINTIFFS FOR COMPILED THIS DATA IF YOU DON'T
22 HAVE IT IN A READILY ACCESSIBLE WAY?

23 MR. VAN NEST: YES.

24 THE COURT: ALL RIGHT. THAT'S DENIED.

25 MR. VAN NEST: I THINK MOST OF IT --

1 THE COURT: THAT'S DENIED.

2 MR. VAN NEST: I THINK MOST OF IT WE HAVE.

3 THE COURT: ALL RIGHT. THAT'S DENIED ANYWAY. THE
4 DEFENDANT WILL BEAR THE COSTS OF COMPILED ANY DATA.

5 OKAY. I AM INCLINED TO HAVE THE CLAIMANTS PROVIDE THEIR
6 SOCIAL SECURITY NUMBERS AND THEN HAVE THE CLAIMS ADMINISTRATOR
7 CONTACT THE DEFENDANTS ONLY IF THEY'RE NOT ABLE TO REACH CLASS
8 MEMBERS AND FIND A GOOD ADDRESS BY WHICH TO CONTACT THE CLASS
9 MEMBERS, BUT I'M GOING TO GIVE YOU THE LAST WORD.

10 MS. DERMODY: YOUR HONOR, I MEAN, I APPRECIATE THE
11 ATTENTION YOU'RE GIVING TO THIS. I DON'T THINK IT'S AN EASY
12 QUESTION.

13 BUT I DO THINK THAT THE WHOLE REASON WE'RE HAVING THIS
14 DISCUSSION IS FOR THE INTERESTS OF THE CLASS MEMBERS, NOT FOR
15 THE INTERESTS OF THE DEFENDANTS, AND IT'S THEIR SOCIALS, AND IN
16 THIS INSTANCE, HAVING THEIR SOCIALS PROVIDED TO THE CLAIMS
17 ADMINISTRATOR FURTHERS THEIR INTERESTS IN HAVING AN EFFICIENT,
18 EFFECTIVE, CLEAN SETTLEMENT PROCESS.

19 I DON'T THINK THAT THERE'S ANY INTEREST FOR THEM, OTHER
20 THAN THE BURDEN AS TALKED ABOUT BY THE DEFENDANTS, NOT TO
21 PRODUCE THEIR SOCIAL SECURITY NUMBERS.

22 SO IN TERMS OF BALANCE HERE, I THINK IT'S REALLY ALL IN
23 FAVOR OF PRODUCING IT, BUT OF COURSE WE RESPECT YOUR HONOR'S
24 DECISION ON THAT.

25 THE COURT: BUT IF THE DEFENDANTS ARE GOING TO GIVE

1 YOU, AS I'M GOING TO ORDER, THE JOB TITLES, SALARY INFORMATION,
2 THE LENGTH OF EMPLOYMENT IN THE VARIOUS JOB TITLES AND WITH THE
3 VARIOUS BASE SALARIES, ISN'T THAT GOING TO PROVIDE YOU THE
4 INFORMATION THAT YOU NEED?

5 YOU'VE ONLY ARTICULATED A NEED FOR THE SOCIAL FOR EITHER
6 THE PASSWORD ISSUE OR FINDING THE LOCATION IF YOU CAN'T
7 OTHERWISE FIND IT, WHICH THE DEFENDANTS ARE AGREEING TO, OR FOR
8 PURPOSES OF TAXES, WHICH IS ONLY RELEVANT IF A CLASS MEMBER
9 COMPLETES A CLAIMS FORM.

10 MS. DERMODY: I THINK ALL OF THOSE ARE TERRIFIC
11 REASONS TO HAVE THE SOCIALS PRODUCED, YOUR HONOR. I DON'T
12 THINK THOSE ARE SMALL THINGS.

13 SO WE JUST MAY NOT BE SEEING IT THE SAME WAY. SINCE IT'S
14 READILY AVAILABLE IN THE DATA FIELDS THAT THE DEFENDANTS HAVE
15 ON THESE CLASS MEMBERS, TO OUR MIND, IT'S NOT A BURDEN
16 QUESTION.

17 IT'S REALLY JUST A MATTER OF, WILL HEFFLER KEEP THAT
18 MATERIAL CONFIDENTIAL? AND THERE'S NO REASON TO BELIEVE THAT
19 THEY WON'T TAKE EVERY STEP TO KEEP THAT CONFIDENTIAL.

20 AND THE BENEFITS TO THE CLASS MEMBERS ARE -- WE'VE NOW
21 IDENTIFIED THREE OF THEM THAT WE THINK ARE VERY POSITIVE
22 BENEFITS TO PRODUCING IT.

23 THE COURT: UM-HUM. ALL RIGHT. WELL, I'LL TAKE THIS
24 UNDER SUBMISSION.

25 LET'S GO TO -- OKAY. I HAVE SOME INDIVIDUAL QUESTIONS

1 ABOUT THE DIFFERENT DOCUMENTS, SO LET'S GO TO THE --

2 MS. DERMODY: AND YOUR HONOR, IF I CAN JUST SAY ONE
3 MORE THING ABOUT THE DATA? WHATEVER WE ORDER ON THE DATA, WE
4 WOULD, ON BEHALF OF OUR -- OF THE SETTLING DEFENDANTS, I THINK
5 THAT THE SAME RULES SHOULD APPLY BOTH WAYS. WE HAVE AGREED TO
6 THAT.

7 SO THE PRELIMINARY APPROVAL ORDER WAS DRAFTED WITH A
8 CERTAIN STRUCTURE IN MIND THAT ASSUMED THAT ALL OF THESE THINGS
9 WOULD BE PRODUCED. WE DIDN'T WANT TO BE IN A POSITION OF
10 BASICALLY EXTRACTING FROM THE SETTLING DEFENDANTS A HIGHER
11 BURDEN OF DATA PRODUCTION THAN YOUR HONOR MIGHT BE INCLINED TO
12 GIVE THE NON-SETTLING DEFENDANTS.

13 SO WHATEVER YOU DECIDE TO DO, WE WOULD JUST WANT TO MAKE
14 SURE IT'S ONE-SIZE-FITS-ALL AND IT APPLIES TO ALL THE
15 DEFENDANTS.

16 THE COURT: UM-HUM. I MAY ORDER THE SOCIAL SECURITY
17 NUMBERS. I JUST HAVEN'T MADE A FINAL DECISION RIGHT NOW.

18 MS. DERMODY: OKAY. THANK YOU.

19 THE COURT: OKAY. WITH REGARD TO -- LET'S GO TO THE
20 NEXT -- I HAD A COUPLE OF QUESTIONS ABOUT THE NOTICE.

21 SO IF YOU LOOK AT PAGE 1 WITH THE CHART "SUMMARY OF YOUR
22 LEGAL RIGHTS AND OPTIONS," UNDER "DO NOTHING," WHICH IS THE
23 FIRST ROW, IT SAYS "GET NO PAYMENT," AND IT SAYS "POTENTIALLY
24 GIVE UP YOUR RIGHTS TO EVER RECOVER FROM THE SETTLING
25 DEFENDANTS FOR THE LEGAL CLAIMS IN THIS CASE."

1 BUT MY UNDERSTANDING FROM READING THESE DOCUMENTS IS THAT
2 IF YOU DON'T DO ANYTHING, YOU DO GIVE UP YOUR RIGHTS UNDER THIS
3 SETTLEMENT.

4 SO WHY DOES IT CONDITION THAT, YOU KNOW, WAIVER THE RIGHTS
5 BY SAYING "POTENTIALLY"?

6 MS. DERMODY: MAYBE -- YES, YOUR HONOR, THAT'S A GOOD
7 CATCH.

8 MAYBE IF IT JUST SAID "GIVE UP YOUR RIGHTS," BUT IT HAD AT
9 THE END A CLAUSE, "IF THIS SETTLEMENT IS FINALLY APPROVED" OR
10 "REACHES THE EFFECTIVE DATE" OR SOMETHING LIKE THAT. I THINK
11 THE "POTENTIALLY" IS REALLY REFERRING TO THE FACT THAT THE
12 SETTLEMENT ISN'T QUITE ALL THE WAY DONE YET.

13 THE COURT: OKAY. WHY DON'T YOU --

14 MS. DERMODY: CAN I CHECK WITH MY --

15 THE COURT: CAN I HAVE YOU CLARIFY THAT, PLEASE?

16 (DISCussion OFF THE RECORD BETWEEN COUNSEL.)

17 MS. DERMODY: WE CAN FIX THAT, YOUR HONOR, YES.

18 THE COURT: AND THEN ON THE NEXT ONE, I ALWAYS HAVE
19 PROBLEMS WITH THE NEXT ONE BECAUSE IT GIVES THE IMPRESSION THAT
20 CLASS MEMBERS WILL GET NOTHING IF THEY OPT OUT.

21 SO WHERE IT -- THIS IS THE ROW THAT SAYS "EXCLUDE
22 YOURSELF, GET NO PAYMENT." I WOULD LIKE THAT TO CLARIFY, "GET
23 NO PAYMENT FROM THIS SETTLEMENT" OR "FROM THE SETTLING
24 DEFENDANTS PURSUANT TO THE SETTLEMENT AGREEMENT," OR HOWEVER
25 YOU WANT TO WORD IT.

1 MS. DERMODY: OKAY, YOUR HONOR. YES, WE CAN FIX
2 THAT.

3 THE COURT: OKAY. AND THEN I THOUGHT THE LAST TWO
4 ROWS ARE KIND OF MERGING OBJECTING AND COMMENTING, AND ALSO
5 THEN MERGING THE HEARING, AND SINCE YOU HAVE A REQUIREMENT THAT
6 IN ORDER TO VOICE AN OBJECTION AT THE HEARING, YOU HAVE TO FILE
7 AND SERVE YOUR OBJECTION WITHIN 45 DAYS, I THINK THAT SHOULD BE
8 SPELLED OUT IN THIS BOX SO THAT FOLKS KNOW THAT IF THEY FAIL TO
9 MEET THAT DEADLINE, THEY'RE EFFECTIVELY FORFEITING THEIR RIGHT
10 TO OBJECT AT THE HEARING.

11 MS. DERMODY: THAT MAKES SENSE, YOUR HONOR, YES.

12 THE COURT: IF YOU COULD CLARIFY THAT IN THOSE LAST
13 TWO ROWS IN THE CHART.

14 IF YOU LOOK AT QUESTION 20 --

15 MR. SAVERI: I'M SORRY, YOUR HONOR, 20, 2-0?

16 THE COURT: 2-0 ON PAGE 8 OF THE NOTICE --

17 MR. SAVERI: THANK YOU.

18 THE COURT: -- WHERE IT GIVES CLASS MEMBERS THE
19 ADVISEMENT THAT THEY CAN OPT OUT FROM JUST ONE OF THE TWO
20 SETTLEMENTS, BUT THE -- THE CLAIM FORM ITSELF DOESN'T GIVE YOU
21 THAT OPTION TO OPT OUT OF ONE OF THE TWO SETTLEMENTS. YOU'RE
22 EITHER ALL IN OR YOU'RE ALL OUT.

23 SO I THINK THAT YOU NEED TO PROVIDE SOMETHING IN THE
24 CLAIM FORM THAT GIVES THE CLAIMANT AN OPTION TO OPT OUT OF ONE
25 OF THE TWO SETTLEMENTS.

1 MS. DERMODY: SO I THINK THAT THESE ARE --

2 THE COURT: IS IT IN THERE?

3 MS. DERMODY: IF I'M UNDERSTANDING YOUR HONOR, THE
4 CLAIM FORM IS ONLY INTENDED TO BE FILED WHEN SOMEONE WANTS TO
5 GET MONEY OUT OF THE SETTLEMENT. THAT'S ITS ONLY PURPOSE.

6 AND THERE'S ACTUALLY A DIFFERENT CLAIM FORM FOR EACH OF
7 THE SETTLEMENTS. SO IF, HYPOTHETICALLY, THERE WAS A CLASS
8 MEMBER WHO REALLY LIKED THE PIXAR/LUCAS SETTLEMENT, BUT DIDN'T
9 LIKE THE INTUIT SETTLEMENT, THEY MIGHT APPROACH THEIR DECISIONS
10 DIFFERENTLY AND FILE A CLAIM FORM FOR ONE AND NOT FOR THE OTHER
11 OR OPT OUT OF ONE.

12 IN TERMS OF THE OPT OUTS, THE EXPECTATION UNDER THE
13 SETTLEMENT AND IN THE NOTICE IS THAT A PERSON WILL WRITE A
14 LETTER SAYING "I WANT TO OPT OUT" AND SPECIFY THAT THEY DON'T
15 WANT TO OPT OUT.

16 AND WE INTENTIONALLY DID NOT PROVIDE A STANDARD FORM TO DO
17 THAT BECAUSE OUR EXPERIENCE IN OTHER CASES WHEN THERE HAS BEEN
18 A FORM IS THAT PEOPLE COMPLETED EVERY FORM AND SUBMITTED ALL
19 THE FORMS, WHETHER THEY WERE CLAIM FORMS, OPT OUT FORMS -- I
20 MEAN, ANY FORM THAT WAS AVAILABLE GOT COMPLETED AND THEN THERE
21 WAS A LOT OF UNDOING THE MISTAKES THAT WERE MADE FROM MULTIPLE
22 SUBMISSIONS OF INCONSISTENT FORMS.

23 THE COURT: I SEE. FOR WHATEVER REASON, I ONLY HAVE
24 A CLAIM FORM FOR THE PIXAR AND LUCASFILM SETTLEMENT. YOU'RE
25 SAYING THERE'S A SEPARATE CLAIM FORM FOR THE INTUIT SETTLEMENT?

1 IS THAT RIGHT? YOU'RE SAYING YOU'RE GOING TO MAIL OUT TWO
2 DIFFERENT --

3 MS. DERMODY: YES.

4 THE COURT: THE NOTICE IS GOING TO BE ONE --

5 MS. DERMODY: YEAH, RIGHT.

6 THE COURT: -- WITH CLAIM FORMS FOR EITHER?

7 MS. DERMODY: YES. AND IF YOUR HONOR WILL LOOK AT
8 THE CLAIM FORM, IN THE MIDDLE OF PAGE 1 WHERE IT SAYS "NOTE,"
9 AND ALSO ACTUALLY WHERE IT SAYS "YOUR SHARE OF PARTIAL
10 SETTLEMENTS," WHERE IT SAYS PIXAR AND LUCASFILM --

11 THE COURT: UM-HUM.

12 MS. DERMODY: -- THERE IS -- I'M SORRY.

13 IS THIS RIGHT?

14 THE COURT: SEE, THIS -- IT LOOKS LIKE THE SAME CLAIM
15 FORM FOR BOTH SETTLEMENTS.

16 MS. DERMODY: I THINK --

17 THE COURT: I'M LOOKING AT THE "NOTE." IT SAYS
18 "APPLY FOR PAYMENT FROM BOTH THE PARTIAL SETTLEMENT FROM PIXAR
19 AND LUCASFILM AND PARTIAL SETTLEMENT WITH INTUIT BY USING JUST
20 ONE CLAIM FORM."

21 SO I GUESS YOU'RE SAYING THE CLASS MEMBER IS GOING TO FILL
22 OUT ONE CLAIM FORM --

23 MS. DERMODY: I'M SORRY.

24 THE COURT: -- BUT THEN ALSO SEND IN A SEPARATE
25 LETTER THAT SAYS, "OH, BY THE WAY, I'M OPTING OUT OF ONE VERSUS

1 THE OTHER."

2 MS. DERMODY: IF THEY WANT TO, YES.

3 AND I CAN UNDERSTAND YOUR CONFUSION. IT SPEAKS TO MY OWN
4 CONFUSION A MINUTE AGO. I'M NOT SURE OF AN EASIER WAY TO DO
5 THIS, UNLESS WE DID TWO SEPARATE CLAIM FORMS THAT ARE
6 PIXAR/LUCAS AND INTUIT, AS I ACTUALLY HAD THOUGHT WE HAD DONE.

7 THE COURT: WHAT IF YOU JUST HAD A CHECK THE BOX ON
8 HERE THAT SAYS, YOU KNOW --

9 MR. SAVERI: YOUR HONOR?

10 THE COURT: UM-HUM.

11 MR. SAVERI: SO YOU WOULD WANT SOMETHING THAT WOULD
12 BE A BOX THEY CHECK THAT SAYS -- ONE WOULD BE INTUIT AND ONE
13 WOULD BE PIXAR/LUCASFILM, OR BOTH, SOMETHING LIKE THAT, SO THAT
14 THEY WOULD AFFIRMATIVELY INDICATE WHAT THEY WERE SIGNING UP
15 FOR? IS THAT THE IDEA? BECAUSE WE CAN DO THAT.

16 THE COURT: I DON'T HAVE A STRONG FEELING ABOUT THE
17 BOTH. I MEAN, IF YOU HAVE IT ESTABLISHED THAT SOMEONE WRITES
18 IN A LETTER, I JUST -- I JUST THOUGHT IF -- YOU KNOW, THE
19 NOTICE SAYS YOU DON'T HAVE TO DO BOTH SETTLEMENTS AND YOU CAN
20 PICK ONE OR THE OTHER, BUT THEN THE CLAIM FORM DOESN'T REALLY
21 GIVE YOU THAT OPTION.

22 MS. DERMODY: YEAH. YOU'RE MAKING A VERY GOOD POINT,
23 YOUR HONOR. I GUESS -- I GUESS THE WAY WE --

24 THE COURT: I DON'T THINK THEY'RE GOING TO WANT TO
25 DEAL WITH IT.

1 MS. DERMODY: I GUESS THE WAY WE STRUCTURED THIS IS
2 WE EXPECT VERY FEW OPT OUTS, AND WE CAN CALL THOSE PEOPLE,
3 WHICH WE TYPICALLY DO TO MAKE SURE THAT THEY UNDERSTAND THAT
4 THEY'RE OPTING OUT, WHEREAS THE CLAIM FORM WE EXPECT TO GET
5 TENS OF THOUSANDS OF THOSE, AND WE MAYBE DIDN'T WANT TO HAVE A
6 LOT OF MISTAKES POTENTIALLY OF PEOPLE CHECKING OR NOT CHECKING
7 OR DOING -- JUST MAKING MISTAKES ON THE CLAIM FORM.

8 SO THE EASIER THE CLAIM FORM, THE LESS LIKELY IT IS FOR A
9 LOT OF FOLLOW UP.

10 THE COURT: YEAH.

11 MR. SAVERI: I MEAN, FRANKLY, YOUR HONOR, I THINK WE
12 ASSUMED THAT IF THEY WERE SIGNING THE CLAIM FORM, THEY WANTED
13 TO SIGN UP FOR BOTH BECAUSE THEY WANTED THE MONEY FROM BOTH.

14 THE COURT: I MEAN, I WOULD SUSPECT THAT THAT'S MORE
15 LIKELY TO HAPPEN. BUT --

16 MR. SAVERI: THERE IS SOME MATHEMATICAL POSSIBILITY,
17 YOUR HONOR, THAT SOMEONE WOULD WANT TO, LIKE, SPLIT THEM UP. I
18 COMPLETELY AGREE. AND WHO KNOWS, RIGHT? THEY MAY WORK FOR ONE
19 COMPANY OR NOT THE OTHER OR LOVE GEORGE LUCAS OR NOT FEEL SO
20 STRONGLY, RIGHT?

21 THE COURT: I MEAN, WHO KNOWS. THERE JUST COULD BE
22 SOME REASON WHY -- I MEAN, I AGREE. IT'S GOING TO BE LIKELY A
23 VERY SMALL NUMBER.

24 BUT IF WE HAVE THAT OPTION IN THE NOTICE --

25 MS. DERMODY: OKAY. SO YOUR HONOR, YOU --

1 THE COURT: I'M GOING TO LET YOU THINK ABOUT HOW YOU
2 WANT TO HANDLE THAT.

3 MS. DERMODY: OKAY. JUST TO MAKE SURE WE UNDERSTAND,
4 WHAT YOU'RE PROPOSING WOULD JUST BE A BOX CHECK ON THE CLAIM
5 FORM? WE COULD ADD THAT.

6 THE COURT: IT DOESN'T HAVE TO BE A BOX CHECK. I
7 MEAN, YOU ALL DO THIS WAY MORE THAN I DO. IF YOU THINK THERE'S
8 ANOTHER WAY THAT MAKES IT CLEAR AND MINIMIZES MISTAKES FOR
9 PEOPLE TO DO AN ELECTION --

10 MS. DERMODY: OKAY. WE'LL THINK ABOUT THAT, YOUR
11 HONOR. THANK YOU.

12 THE COURT: OKAY. ALL RIGHT. OKAY. SO ON THE CLAIM
13 FORM, CAN YOU ALSO JUST MAKE IT CLEARER THAT THE DEADLINE FOR
14 DISPUTING INFORMATION ABOUT A CLASS MEMBERS' EMPLOYMENT IS THE
15 SAME AS THE DEADLINE FOR COMPLETING THE CLAIM FORM ON-LINE?

16 MS. DERMODY: YES, WE CAN DO THAT.

17 THE COURT: OKAY. WHY DON'T DO YOU THAT?

18 LET'S GO BACK TO THE NOTICE HERE WHERE -- THIS IS THE
19 "EXCLUDE YOURSELF," SECOND ROW OF THE SUMMARY CHART.

20 MS. DERMODY: I'M SORRY, YOUR HONOR. WHICH PAGE ARE
21 YOU ON?

22 THE COURT: PAGE 1.

23 MS. DERMODY: OH, OKAY, YES.

24 THE COURT: I THINK THAT WORDING IS REALLY AWKWARD.

25 MS. DERMODY: IN --

1 THE COURT: UNDER "EXCLUDE YOURSELF," IT SAYS "THIS
2 IS THE ONLY WAY THAT YOU CAN EVER BE PART OF ANY OTHER LAWSUIT
3 AGAINST ANY OF THE SETTLING DEFENDANTS ABOUT THE LEGAL CLAIMS
4 IN THIS CASE."

5 WHY DON'T YOU CHANGE THAT TO "THIS IS THE ONLY WAY YOU CAN
6 FILE YOUR OWN LAWSUIT OR BE PART OF ANY OTHER LAWSUIT ABOUT THE
7 LEGAL CLAIMS IN THIS CASE AGAINST ANY OF THE SETTLING
8 DEFENDANTS." OKAY?

9 MS. DERMODY: SO IT WOULD SAY "THIS IS THE ONLY WAY
10 THAT YOU CAN" --

11 THE COURT: "YOU CAN FILE YOUR OWN LAWSUIT OR BE PART
12 OF ANY OTHER LAWSUIT ABOUT THE LEGAL CLAIMS IN THIS CASE
13 AGAINST ANY OF THE SETTLING DEFENDANTS."

14 MS. DERMODY: THAT'S FINE WITH PLAINTIFFS.

15 I'M JUST CHECKING WITH MY COLLEAGUES.

16 DO YOU WANT TO DO THAT?

17 MS. HENN: (NODS HEAD UP AND DOWN.)

18 MS. DERMODY: OKAY. YEP. THANK YOU.

19 THE COURT: NOW, THIS WILL ONLY DEPEND ON IF I PUT

20 THE FAIRNESS HEARING BACK, BUT IN QUESTION 15 OF THE NOTICE, IT
21 IMPLIES THAT THE ONLY DELAY TO RECEIVING PAYMENTS WOULD BE IF
22 THERE'S AN APPEAL, BUT IT SOUNDS LIKE YOU ALL ARE CONTEMPLATING
23 A DELAY BEYOND THE FINAL FAIRNESS HEARING, SO I THINK THAT IF I
24 AGREE TO DO THAT, WHICH I HAVEN'T AGREED TO DO, THAT WOULD NEED
25 TO BE CLARIFIED.

1 MS. DERMODY: OKAY, YOUR HONOR. THAT -- WITH ALL OF
2 THESE, WOULD IT BE OKAY IF WE SUBMIT TO YOUR HONOR, IN THE NEXT
3 24 HOURS, A REVISED NOTICE THAT PICKS UP THESE CHANGES FOR YOUR
4 HONOR'S CONSIDERATION?

5 THE COURT: YEAH. ALTHOUGH I THINK ON THAT ONE I
6 NEED TO TELL YOU, I STILL FEEL UNCOMFORTABLE ABOUT GIVING FINAL
7 APPROVAL IF I JUST DON'T KNOW HOW MUCH MONEY THE CLASS MEMBERS
8 ARE GETTING.

9 I COULD PUSH BACK -- YOU KNOW, I COULD GIVE YOU AN EARLY
10 FINAL APPROVAL DATE, BUT I COULD ALSO, YOU KNOW, PUSH IT CLOSER
11 TO -- I GUESS YOUR DEADLINE IS IF ANY OTHER DEFENDANT SETTLES
12 BY JUNE 1, SO WE'RE NOT REALLY EVEN GOING TO KNOW UNTIL JUNE 1,
13 RIGHT?

14 HOW MUCH MORE BURDEN SOME WOULD IT BE TO JUST GO AHEAD AND
15 MAKE THE PAY OUT FROM THIS SETTLEMENT? ARE YOU WORRIED ABOUT
16 CLAIMS ADMINISTRATION FEES AND COSTS?

17 MS. DERMODY: I MEAN, IT'S SOMEWHAT MORE BURDEN SOME,
18 YOUR HONOR, IN TERMS OF EFFICIENCIES IF WE ASSUME THAT THERE'S
19 SOMETHING ELSE COMING DOWN THE ROAD.

20 WE COULD GET IT ALL DONE NOW. I THINK OUR VIEW, AMONG
21 OTHER THINGS, WAS WE WANT THE CLASS MEMBERS TO GET BIGGER
22 CHECKS THAT REFLECT MORE OF THE CASE IF THAT OPTION WAS OUT
23 THERE.

24 BUT IF YOUR HONOR WANTS TO GET IT DONE AS THEY COME IN, I
25 THINK THAT'S ALSO A WAY TO DO IT.

1 THE COURT: WELL, THIS IS WHAT I'M INCLINED TO DO.
2
3 I'LL EITHER GIVE YOU A FINAL APPROVAL HEARING OF FEBRUARY 27TH
4 AT 1:30, OR -- AND I'M GOING TO ASSUME THAT THERE'S NOT GOING
5 TO BE A DELAY AND THAT WE'RE GOING TO MOVE FORWARD ON YOUR
6 ATTORNEYS' FEES MOTION AND THE CLASS IS GOING TO GET A PAY OUT
7 SOON THEREAFTER; OR I WILL -- YOU KNOW, I COULD STILL GO AHEAD
8 AND GIVE PRELIMINARY APPROVAL NOW, BUT I WOULD PROBABLY
9 POSTPONE THE FINAL FAIRNESS HEARING UNTIL SOMETIME IN MTD-JUNE.

9 SO WHAT DO YOU PREFER OF THOSE TWO CHOICES?

10 (DISCUSSION OFF THE RECORD BETWEEN PLAINTIFFS' COUNSEL.)

11 MS. DERMODY: I THINK, YOUR HONOR, WE'D LIKE TO GO
12 FORWARD NOW.

13 THE COURT: OKAY. ALL RIGHT. THEN I'M GOING TO GIVE
14 YOU THE TIMELINE ACCORDING TO THE FEBRUARY 27TH DATE.

15 OKAY. SO THEN WHAT I'M GOING TO ASK IS THAT FOR THESE
16 LITTLE NITS, IF YOU CAN MAKE THE NITS AND THEN IF YOU CAN
17 E-MAIL ME, IN CASE WE WANT TO MAKE ANY MORE, A REVISED NOTICE
18 FORM, CLAIM FORM, AND PROPOSED ORDER.

19 LET ME GO THROUGH THE REST.

20 SO FOR -- I GUESS FOR QUESTION 15, YOU DON'T HAVE TO WORRY
21 ABOUT IT BECAUSE THERE WON'T BE ANY FURTHER DELAYS.

22 MS. DERMODY: EXCUSE ME, YOUR HONOR. I'M JUST
23 CONSULTING WITH MY COLLEAGUE.

24 THE COURT: YEAH, GO AHEAD. TAKE YOUR TIME.

25 (DISCUSSION OFF THE RECORD BETWEEN PLAINTIFFS' COUNSEL.)

1 THE COURT: HAVE YOU CHANGED YOUR MIND ABOUT WHETHER
2 YOU WANTED --

3 MS. DERMODY: WE HAVE DIVERSITY OF OPINION, YOUR
4 HONOR, BUT I THINK WE'RE GOING TO STICK WITH WHAT WE'VE
5 PROPOSED.

6 THE COURT: OKAY. TO DO IT --

7 MS. DERMODY: TO DO IT IN FEBRUARY.

8 THE COURT: OKAY. ALL RIGHT. THAT WILL GIVE THE
9 DEFENDANTS CLOSURE FASTER FOR THE SETTLING DEFENDANTS.

10 OKAY. THEN I'M GOING TO ORDER THE SOCIAL SECURITY NUMBERS
11 SO THIS CAN BE DONE EXPEDITIOUSLY. I DO WANT -- IS IT HEFFLER?

12 MS. DERMODY: HEFFLER, YES, YOUR HONOR.

13 THE COURT: -- HEFFLER TO FILE A DECLARATION ABOUT
14 ALL OF THE STEPS THAT THEY'RE GOING TO TAKE TO SECURE THE
15 SOCIAL SECURITY NUMBERS AND OTHER INFORMATION.

16 WHEN CAN THEY FILE THAT?

17 MS. DERMODY: I THINK ABOUT A WEEK, YOUR HONOR. I
18 DON'T -- WE DON'T CONTROL THEM IN THAT SENSE, BUT I HAVE TO
19 IMAGINE THAT THEY CAN TURN THAT STUFF OVER VERY, VERY QUICKLY.

20 THE COURT: WELL, THEY'RE GOING TO HAVE TO DO IT
21 SOONER THAN THAT. LET'S HAVE THEM DO IT -- BECAUSE THE
22 TIMELINE THAT I CREATED NEEDS THEM TO DO THAT FASTER.

23 MS. DERMODY: OKAY, YOUR HONOR. WOULD THIS FRIDAY
24 BE --

25 THE COURT: YES, THAT'S FINE.

1 MS. DERMODY: OKAY.

2 THE COURT: SO 10-25. I MEAN, I LOOKED AT THE
3 CALIFORNIA SUPREME COURT'S DECISION IN PIONEER ELECTRONICS
4 VERSUS SUPERIOR COURT OF LOS ANGELES AND DOING THE BALANCING OF
5 PRIVACY INTERESTS AGAINST THE NEED FOR DISCLOSURE.

6 I THINK IN THIS CASE THE NEED FOR DISCLOSURE TO NOTIFY
7 THE CLASS OUTWEIGHS THE PRIVACY INTERESTS AND WOULD BE AN
8 INTEREST TO THE CLASS TO MORE EXPEDITIOUSLY PROCESS THEIR
9 CLAIMS.

10 NOW -- OKAY. SO QUESTION 15 IS MOOTED.

11 WITH REGARD TO -- OH, QUESTION 22 OF THE NOTICE, THAT'S
12 THE SAME ISSUE AS THE CLAIM FORM. ON 22, YOU MAY WANT TO MAKE
13 IT CLEARER THAT EVEN IF YOU OPT OUT OF ONE SETTLEMENT, YOU CAN
14 STILL RECOVER COMPENSATION FROM THE OTHER SETTLEMENT. IT'S NOT
15 REALLY CLEAR.

16 MS. DERMODY: OKAY.

17 THE COURT: OKAY. ALL RIGHT. QUESTION 27 OF THE
18 NOTICE, ON 27, I DO THINK IT NEEDS TO STATE THAT THE SAME AS
19 THE "EXCLUDE YOURSELF" ROW IN THE SUMMARY CHART ON PAGE 1,
20 THAT -- WELL, DO THEY MAINTAIN THEIR RIGHT TO SUE IF THEY DO
21 NOTHING? OR THEY JUST GIVE UP THEIR RIGHTS AS CLASS MEMBERS
22 AND DON'T GET ANY COMPENSATION?

23 MS. DERMODY: THE LATTER, YOUR HONOR. THEY
24 BASICALLY -- THEY GIVE UP THEIR RIGHT TO HAVE CLAIMS AGAINST
25 THE SETTLING DEFENDANTS FOR THE ISSUES IN THIS CASE.

1 MR. STEWART: YOUR HONOR, I BELIEVE IF THEY DON'T OPT
2 OUT, IF THEY DID NOTHING --

3 THE COURT: YES.

4 MR. STEWART: -- MEANING THEY DIDN'T OPT OUT --

5 THE COURT: YES.

6 MR. STEWART: -- THEN THEY WOULD BE BOUND BY THE
7 RELEASE.

8 MS. DERMODY: RIGHT.

9 MR. STEWART: SO THEY WOULD BE GIVING UP THEIR RIGHT
10 TO SUE.

11 THE COURT: I'M SORRY. I DIDN'T HEAR THE LAST PART.

12 MR. STEWART: I'M SORRY. THEY WOULD BE GIVING UP
13 THEIR RIGHT TO SUE IF THEY DO NOTHING.

14 THE COURT: OKAY. I THINK THAT SHOULD PROBABLY BE A
15 LITTLE MORE CLEAR --

16 MS. DERMODY: OKAY.

17 THE COURT: -- THAT THAT'S ALSO A CONSEQUENCE OF
18 DOING NOTHING, BECAUSE THEY'RE GIVING UP ALL THEIR CLAIMS.
19 IT'S JUST FOCUSED ON THE MONEY RIGHT NOW.

20 MS. DERMODY: RIGHT, YOUR HONOR, YES.

21 THE COURT: OKAY. SO IN YOUR VARIOUS AGREEMENTS, YOU
22 HAVE, LIKE, SPECIFIC LANGUAGE THAT THE OPT OUT FOLKS NEED TO
23 USE, BUT THAT'S NOT INCLUDED IN THE NOTICE, THIS "I WANT TO BE
24 EXCLUDED FROM THE HIGH-TECH EMPLOYEE ANTITRUST LITIGATION," ET
25 CETERA.

1 MS. DERMODY: THAT'S A GOOD CATCH, YOUR HONOR. THAT
2 IS AN OVERSIGHT. YES, WE'LL ADD THAT.

3 THE COURT: OKAY. ALL RIGHT. SO HERE IS THE
4 SCHEDULE: I'D LIKE YOU TO SUBMIT THE REVISED NOTICE CLAIM FORM
5 AND PROPOSED ORDER BY NEXT MONDAY.

6 CAN YOU DO THAT?

7 MS. DERMODY: YES, ABSOLUTELY.

8 THE COURT: OR DO YOU WANT TO DO IT SOONER?

9 MS. DERMODY: WE CAN DO IT SOONER, YOUR HONOR.

10 THE COURT: OKAY. WHEN CAN YOU DO IT?

11 MS. DERMODY: IT'LL MAYBE TAKE A DAY FOR US TO WORK
12 WITH THE SETTLING DEFENDANTS TO MAKE SURE THAT EVERYONE'S IN
13 AGREEMENT ON THE LANGUAGE, BUT MAYBE IN TWO DAYS.

14 THE COURT: I MEAN, IF YOU NEED UNTIL THE END OF THE
15 WEEK, THAT'S -- I JUST WANT TO MAKE SURE IT'S RIGHT.

16 MS. DERMODY: THAT WOULD BE FINE, YOUR HONOR, YES.

17 THE COURT: OKAY. THE 25TH. OKAY. SO FILE IT BY
18 THE 25TH.

19 THE DEFENDANTS ARE TO PROVIDE THE CLASS MEMBER INFORMATION
20 BY NOVEMBER 25TH; THE NOTICES ARE TO BE MAILED AND POSTED TO
21 THE INTERNET ON DECEMBER 9TH.

22 MR. SAVERI: I'M JUST CATCHING UP. DECEMBER 9TH,
23 YOUR HONOR?

24 THE COURT: YES. THEN FILE YOUR MOTIONS FOR FINAL
25 APPROVAL, ATTORNEYS' FEES AND COSTS, AND SERVICE AWARDS

1 DECEMBER 20TH. NO, WAIT A MINUTE.

2 WE HAVE THE OPT OUT DEADLINE AND OBJECTION DEADLINE OF
3 JANUARY 24TH. I THINK THAT -- WOULDN'T YOU WANT TO RESPOND TO
4 ANY OF THOSE OBJECTIONS IN YOUR MOTIONS?

5 MS. DERMODY: I THINK, YOUR HONOR, THAT THE CURRENT
6 BEST PRACTICE ON THE FEE PETITION, FEE AND COST PETITION --

7 THE COURT: YEAH.

8 MS. DERMODY: -- IS TWO WEEKS BEFORE THE OPT OUT
9 DEADLINE, OPT OUT AND OBJECTION DEADLINE. SO WHATEVER WE SET
10 AS THE OPT OUT DEADLINE, WE WOULD FILE OUR FEE AND COST
11 PETITION TWO WEEKS BEFORE THAT; AND THEN WE'D FILE OUR MOTION
12 FOR FINAL APPROVAL AFTER THE OPT OUT OBJECTION DEADLINE FOR THE
13 PURPOSE OF RESPONDING TO ANY OBJECTIONS AND CLARIFYING ISSUES
14 FOR THE COURT.

15 THE COURT: YOU KNOW WHAT? WHY DON'T YOU SET THESE
16 DATES, AND I'LL JUST TELL YOU, I WANT EVERYTHING NO LATER THAN
17 TWO WEEKS BEFORE THE FINAL APPROVAL HEARING. SO THE FINAL
18 APPROVAL HEARING IS GOING TO BE FEBRUARY 20TH -- I'M SORRY --
19 FEBRUARY 27TH, 2014, AT 1:30.

20 AND JUST MAKE SURE THAT I GET EVERYTHING -- WELL, YOU SAID
21 SEVEN DAYS BEFORE? I GUESS THAT'S ALL RIGHT. I MEAN, I'D
22 PREFER TWO WEEKS, BUT SEVEN DAYS IS FINE IF THAT GIVES THE
23 CLASS MORE TIME TO FIGURE OUT IF THEY WANT TO PARTICIPATE OR
24 OPT OUT OR OBJECT OR WHATNOT.

25 MS. DERMODY: I THINK THE ONLY -- MY ONLY POINT, YOUR

1 HONOR, WAS JUST ABOUT THE FEE MOTION, THAT THAT SHOULD IDEALLY
2 BE COMPLETED AND FILED WITH YOUR HONOR TWO WEEKS BEFORE THE OPT
3 OUT DEADLINE, SO BACK IN JANUARY; AND THEN THERE WILL BE
4 ACTUALLY A FINAL APPROVAL BRIEF THAT DEALS WITH OTHER MATTERS
5 THAT CAN BE FILED TWO WEEKS BEFORE THE FINAL APPROVAL HEARING,
6 OR LONGER IF YOUR HONOR WOULD PREFER TO HAVE LONGER.

7 THE COURT: OH, NO. TWO WEEKS -- I'D LIKE IT TO BE
8 SOONER OR CLOSER TO THE APPROVAL HEARING, BECAUSE WHAT I LIKE
9 TO GET AT THE FINAL APPROVAL HEARING ARE THE LATEST STATISTICS
10 OF HOW MANY PEOPLE HAVE OPTED OUT, HOW MANY PEOPLE HAVE
11 SUBMITTED CLAIM FORMS, I LIKE ALL THE FINAL DATA ON HOW MUCH
12 MONEY PEOPLE ARE GOING TO RECEIVE, AND I THINK YOU GET A MORE
13 COMPLETE ANSWER THE CLOSER THAT IS TO THE HEARING.

14 MS. DERMODY: OKAY, YOUR HONOR.

15 MR. SAVERI: SO IF THE HEARING, FINAL APPROVAL
16 HEARING IS ON THE 27TH --

17 THE COURT: YES.

18 MR. SAVERI: -- ARE YOU SAYING YOU'D LIKE -- YOU'D BE
19 OKAY WITH A BRIEF ON THE 20TH, FOR EXAMPLE?

20 I THINK WE WANT TO MAKE SURE YOU HAVE ENOUGH TIME --

21 THE COURT: I PREFER TWO WEEKS. I'D PREFER THE
22 13TH --

23 MR. SAVERI: OKAY.

24 THE COURT: -- TO BE, YOU KNOW, AS COMPLETE AS
25 POSSIBLE AS TO HOW MANY CLAIM FORMS HAVE BEEN RECEIVED, ET

1 CETERA.

2 MR. SAVERI: THAT'LL WORK. I JUST WANTED TO MAKE
3 SURE WE HAD ENOUGH TIME TO GET THE INFORMATION AND NOT -- AND
4 WE DIDN'T CROWD YOU.

5 THE COURT: SO WHY DON'T YOU PUT THE DEADLINES IN IN
6 THE REVISED DOCUMENTS THAT YOU'RE GOING TO SUBMIT.

7 I DON'T KNOW IF YOU WANTED -- 45 DAYS FROM THE NOTICE DATE
8 FOR AN OPT OUT OR OBJECTION IS A LITTLE BIT TIGHT. IF YOU
9 COULD BUILD IN MORE TIME FOR THAT, I THINK THAT WOULD BE GOOD,
10 BECAUSE THAT MAY NOT -- I DON'T KNOW IF THAT'S POSSIBLE WITH
11 THE FEBRUARY 27TH HEARING DATE.

12 ALTHOUGH I GUESS THAT'S PART OF YOUR SETTLEMENT AGREEMENT
13 IS THE 45 DAYS, SO --

14 (DISCUSSION OFF THE RECORD BETWEEN PLAINTIFFS' COUNSEL.)

15 THE COURT: CAN YOU ALSO FILE A NEW PROPOSED ORDER,
16 AND IN PARAGRAPH 3 OF YOUR PROPOSED ORDER, PUT IN REASONS WHY
17 THE AGREEMENT FALLS WITHIN THE RANGE OF REASONABLENESS.

18 AND ULTIMATELY WHEN YOU FILE FINAL APPROVAL DOCUMENTS,
19 ESPECIALLY ON ATTORNEYS' FEES, I ACTUALLY LIKE THE SUBSTANTIVE
20 REASONS WHY FEES ARE BEING AWARDED IN THE SPECIFIC AMOUNT. I
21 WANT A BRIEF, BASICALLY. THEY TEND TO BE VERY CONCLUSORY
22 BECAUSE AT THAT POINT EVERYONE'S COMING TO COURT HOLDING HANDS
23 AND THERE'S NOT MUCH DISPUTE.

24 BUT I WOULD ACTUALLY LIKE YOUR ORDER TO REALLY LAY OUT THE
25 REASONS WHY YOU THINK YOU'RE ENTITLED TO WHATEVER YOU'RE

1 REQUESTING.

2 OKAY. WHAT ELSE DO WE HAVE TO DO ON PRELIMINARY APPROVAL?

3 OTHERWISE LET'S GO ON TO THE CMC.

4 BUT IS THERE ANYTHING MORE ON PRELIMINARY APPROVAL?

5 MS. DERMODY: I DON'T THINK SO, YOUR HONOR.

6 THE COURT: OKAY.

7 MS. DERMODY: NOT FROM OUR PERSPECTIVE.

8 THE COURT: ALL RIGHT. LET'S MOVE ON TO THE CMC.

9 THANK YOU MS. HENN AND MR. STEWART.

10 MS. HENN: THANK YOU, YOUR HONOR.

11 THE COURT: ALL RIGHT. WELL, FIRST I WANT TO
12 APOLOGIZE THAT MY CLASS CERT ORDER IS NOT OUT YET. I HAD
13 REALLY INTENDED FOR IT TO BE DONE MORE PROMPTLY, SO I
14 APOLOGIZE. IT'S TAKING LONGER THAN I HAD EXPECTED.

15 I THINK THAT THAT NOW REQUIRES US TO MOVE YOUR MEDIATION
16 DEADLINE, CORRECT? BECAUSE YOU WANTED ROUGHLY 60 DAYS FROM
17 WHEN THE ORDER IS OUT? IS THAT RIGHT?

18 MR. VAN NEST: WE DID, YOUR HONOR.

19 THE COURT: OKAY.

20 MR. VAN NEST: BUT I THINK WE CAN SOLVE THAT PRETTY
21 SIMPLY. WE HAVE A DATE --

22 THE COURT: OH, YOU DO?

23 MR. VAN NEST: -- WITH THE MEDIATOR.

24 THE COURT: WHAT DATE IS THAT?

25 MR. VAN NEST: WELL, IT'S NOVEMBER 19TH, SUBJECT TO

1 YOUR APPROVAL. THE DATE THAT YOU'D GIVEN US WAS A LITTLE
2 EARLIER. IF YOU COULD BUMP THE DATE TO THE MIDDLE OF DECEMBER,
3 THEN WE HAVE A DATE SCHEDULED NOW.

4 THE COURT: THAT'S FINE, BECAUSE I AM STILL HOPING TO
5 GIVE YOU AN ORDER WELL BEFORE THAT DATE.

6 MR. VAN NEST: THAT'S GREAT.

7 THE COURT: OKAY.

8 MR. VAN NEST: SO IF YOU COULD JUST MOVE -- THE DATE
9 IS NOW NOVEMBER 15, THE DEADLINE. IF YOU COULD MOVE IT 30
10 DAYS, WE HAVE SOMETHING SCHEDULED THAT WE'RE GOING TO
11 PARTICIPATE IN ON THE 19TH.

12 THE COURT: OKAY. DO YOU WANT ME TO MOVE IT TO
13 DECEMBER 13TH?

14 MR. VAN NEST: THAT'S GREAT.

15 THE COURT: ALL RIGHT. THANK YOU FOR THAT.

16 ALL RIGHT. LET'S TALK ABOUT THE -- I'D LIKE TO MAKE A
17 PROPOSAL -- AH. MOTIONS IN LIMINE, THOSE LIMITATIONS SHOULD
18 REMAIN THE SAME. I'M NOT GOING TO CHANGE THAT.

19 SAME FOR DAUBERTS. I MEAN, UNLESS -- I THINK THAT'S FINE
20 AS IT IS.

21 BUT I'D LIKE TO MAKE A PROPOSAL ON CHANGES TO THE SUMMARY
22 JUDGMENT SCHEDULE AND LET YOU BE HEARD.

23 I CERTAINLY HEAR WHAT THE DEFENDANTS ARE SAYING, THAT ALL
24 SIDES ARE CLAIMING THAT THE SCOPE OF THE CASE IS UNCHANGED BY
25 PIXAR/LUCASFILM AND INTUIT'S SETTLEMENT.

1 HOWEVER, I'D LIKE TO SUGGEST FOR THE INDIVIDUAL
2 DEFENDANTS' BRIEFS THAT EACH DEFENDANT, INSTEAD OF MY ORIGINAL
3 7 PAGES EACH, WOULD GET 9 PAGES EACH, SO THAT THE TOTAL PAGE
4 LIMIT WOULD BE 36 FOR THE MOVING PAPERS; 36 FOR THE OPPOSITION;
5 AND 25 FOR THE REPLY INSTEAD OF THE 42, 42, 32.

6 AND I'M MOSTLY JUST THINKING IN TERMS OF WHAT WE CAN
7 HANDLE DURING THE HEARINGS ON THESE VARIOUS DATES, YOU KNOW,
8 THE DISPOSITIVE MOTIONS AND DAUBERT MOTIONS ON MARCH 20TH AND
9 27TH. I JUST HAVE CONCERNS.

10 I MEAN, JUST BECAUSE OF WHAT'S, UNFORTUNATELY, BEEN
11 SCHEDULED IN ALL OF MY OTHER CASES, I'M CONCERNED THAT WE MAY
12 NOT BE ABLE TO HANDLE MUCH MORE THAN THAT. IT'S JUST OUR OWN
13 LIMITATIONS.

14 SO DO YOU WANT TO BE HEARD ON --

15 MR. VAN NEST: JUST BRIEFLY, YOUR HONOR.

16 THE COURT: YES.

17 MR. VAN NEST: IF WE -- YOUR HONOR GAVE US 15 PAGES
18 ON THE COMMON ISSUES.

19 THE COURT: THAT'S THE SAME.

20 MR. VAN NEST: RIGHT.

21 THE COURT: THAT'S UNCHANGED.

22 MR. VAN NEST: IF WE'RE -- IF WE'RE GOING TO HAVE TO
23 MOVE FROM 42 --

24 THE COURT: UM-HUM.

25 MR. VAN NEST: -- WHICH WE HAD BEFORE, DOWN TO A

1 LOWER NUMBER --

2 THE COURT: 36.

3 MR. VAN NEST: -- COULD WE HAVE JUST A FEW MORE PAGES
4 ON THE COMMON ISSUES? SAY 20?

5 THE COURT: WELL --

6 MR. VAN NEST: I UNDERSTAND WE CAN ALLOCATE THESE THE
7 WAY WE WANT. I'M TRYING HARD TO COORDINATE WITH EVERYONE.

8 THE COURT: SURE.

9 MR. VAN NEST: BUT OBVIOUSLY IF THE PLAINTIFFS ARE
10 SAYING, YOU KNOW, THE SCOPE OF ISSUES IS THE SAME, TO THE
11 EXTENT THAT THERE'S EVIDENCE AFFECTING LUCASFILM AND SO ON,
12 PIXAR, WE STILL HAVE TO ADDRESS IT.

13 SO I WOULD HAVE NO PROBLEM WITH 9 EACH IF WE COULD GET 20
14 ON THE COMMON, AND THEN WHATEVER FLOWS FROM THAT WITH A REPLY.

15 THE COURT: WELL, LET ME ASK YOU, OKAY, WHAT IF WE --
16 DO YOU THINK THAT THE COMMON ISSUES WILL BE MORE -- WELL, WHAT
17 DO YOU HAVE --

18 MR. VAN NEST: IT COULD BE --

19 THE COURT: -- IN MIND -- MY ONLY CONCERN ON THE
20 SUMMARY JUDGMENT AND THE REASON WHY I'M ALSO LIMITING THE
21 BRIEFING, NUMBER ONE, IS THERE ARE GOING TO BE SO MANY
22 DIFFERENT MOTIONS THAT IT'S GOING TO BE DIFFICULT FOR MY
23 CHAMBERS TO HANDLE.

24 MR. VAN NEST: RIGHT.

25 THE COURT: ALSO, I JUST THINK THAT THE LIKELIHOOD

1 THAT THERE WILL BE A SINGLE MATERIAL FACTUAL DISPUTE IS FAIRLY
2 LIKELY BASED ON WHAT I'VE SEEN SO FAR IN THIS CASE.

3 SO I DON'T WANT TO INVEST ALL OF MY CHAMBERS RESOURCES ON
4 MOTIONS THAT I REALLY JUST DON'T -- I MEAN, I'M MORE LIKELY TO
5 SEE IF THERE'S SOME ISSUE LIKE THE INDIVIDUAL, LIKE THE WHOLE
6 PRESIDIO ISSUE THAT LUCASFILM BROUGHT IN THE MOTION TO DISMISS
7 CONTEXT, THAT I CAN UNDERSTAND.

8 MR. VAN NEST: SURE.

9 THE COURT: BUT OTHERWISE ON THE COMMON ISSUES, I
10 JUST THINK THERE'S GOING TO BE A FACTUAL DISPUTE HERE.

11 MR. VAN NEST: WELL, I THINK, YOUR HONOR, OBVIOUSLY
12 IT'S AN IMPORTANT CASE AND OBVIOUSLY THERE ARE A LOT OF
13 RESOURCES IN IT. I'M NOT ASKING FOR MUCH MORE.

14 I DISAGREE WITH THE COURT. I DO THINK THERE ARE A COUPLE
15 OF REALLY BIG PICTURE ISSUES THAT WE'LL BENEFIT FROM.

16 THE COURT: OKAY.

17 MR. VAN NEST: AND IF 15 IS ALL YOU CAN ACCOMMODATE,
18 WE'LL LIVE WITH IT. BUT IF WE CAN HAVE 20 ON THE COMMON
19 ISSUES, MAYBE WE COULD --

20 THE COURT: OKAY. WELL, I WOULD ENTERTAIN INCREASING
21 THE COMMON TO 20, BUT THEN I WOULD WANT TO CUT THE INDIVIDUAL A
22 LITTLE BIT MORE, MAYBE BACK TO 7 PAGES PER DEFENDANT LIKE IT
23 WAS PREVIOUSLY. WOULD THAT BE BETTER FOR YOU TO HAVE MORE
24 PAGES --

25 MR. VAN NEST: IT'S A PAGE EITHER WAY. I MEAN, IT'S

1 A PAGE EITHER WAY. SO -- I MEAN, I UNDERSTAND IF -- MY
2 UNDERSTANDING OF WHAT YOU SAID EARLIER WAS IF WE NEED TO SPEND
3 MORE ON THE COMMON ISSUES, WE'VE GOT TO TAKE IT OUT OF THE
4 INDIVIDUAL ISSUES, AND WE'LL DO THAT.

5 SO IF -- RIGHT NOW IF YOU'RE GIVING US 36, 9 TIMES 4, PLUS
6 15 --

7 THE COURT: YES.

8 MR. VAN NEST: -- WE'VE GOT 51 PAGES AND I'M ASKING
9 FOR 56 PAGES. SO WHAT YOU'RE SUGGESTING IS IN THIS BALLPARK.

10 THE COURT: IT'S JUST THE ALLOCATION OF PAGES. I
11 MEAN, I WOULD LIKE -- I'D LIKE TO KEEP -- JUST BECAUSE I DO
12 THINK THERE WILL BE A HUMAN LIMIT TO WHAT WE CAN HANDLE.

13 MR. VAN NEST: SURE.

14 THE COURT: I MEAN, ALL OF THE ORDERS IN THIS CASE
15 HAVE BEEN REALLY BIG ENDEAVORS FOR US.

16 MR. VAN NEST: RIGHT. YOU'RE BUSY ENOUGH, YOUR
17 HONOR. YOU DON'T NEED TO SPEND ANY MORE TIME ON IT.

18 WE'LL LIVE WITH THAT, ASSUMING WE CAN ALLOCATE THE PAGES
19 THE WAY WE DEEM APPROPRIATE. OBVIOUSLY IF WE SPEND A FEW MORE
20 ON COMMON ISSUES, WE'LL TAKE THEM AWAY.

21 THE COURT: THAT'S FINE. DO YOU WANT TO DO IT THAT
22 WAY THEN?

23 MR. VAN NEST: WE'LL DO IT THAT WAY.

24 THE COURT: OKAY.

25 MR. VAN NEST: SO WE'VE GOT BASICALLY 51 PAGES

1 OPENING FOR EVERYTHING.

2 THE COURT: YES. THEN 51 FOR THE REPLY; AND THEN
3 THERE'S -- I'M SORRY, FOR THE OPPOSITION; AND THEN 35 FOR THE
4 REPLY, AND WHY DON'T YOU DISTRIBUTE THAT HOWEVER YOU THINK IS
5 MOST APPROPRIATE FOR THE ISSUES AND FOR YOUR CLIENTS?

6 MR. VAN NEST: WE'LL DO THAT.

7 THE COURT: OKAY. WE'LL DO IT THAT WAY.

8 MR. VAN NEST: YEAH.

9 THE COURT: OKAY. AND THEN FOR THE PLAINTIFFS,
10 YOU'RE STILL STUCK AT 14, 14, 10.

11 MS. DERMODY: YES, YOUR HONOR.

12 THE COURT: OKAY. I MEAN, I DON'T KNOW. ARE YOU
13 EVEN GOING TO FILE ONE? OR --

14 MS. DERMODY: AT THIS POINT IT'S UNDECIDED, YOUR
15 HONOR. WE HAVEN'T COME UP WITH AN ISSUE YET.

16 (LAUGHTER.)

17 THE COURT: OKAY. WELL, I MEAN -- YOU KNOW, YOU'RE
18 CORDIALLY WELCOME TO NOT FILE ONE IF YOU DON'T -- YOU KNOW, IF
19 YOU -- DON'T GO FISHING UNNECESSARILY FOR AN ISSUE.

20 MS. DERMODY: YES, YOUR HONOR.

21 THE COURT: OKAY. WHAT ELSE?

22 OH, I THINK I SHOULD PROBABLY SET A FURTHER CMC. I THINK
23 THAT WOULD BE HELPFUL AFTER YOU HAVE THE CLASS CERT ORDER,
24 AFTER YOU'VE -- WHAT ABOUT DECEMBER 18TH? THAT WOULD BE AFTER
25 YOUR MEDIATION DEADLINE AND IT'LL BE RIGHT BEFORE EXPERT

1 DISCOVERY CUT OFF, BUT YOU'LL BE DONE WITH EXPERT REPORTS.

2 I DON'T KNOW IF THAT'S NOT A GOOD DATE FOR TRAVEL
3 SCHEDULES. WHAT --

4 MS. DERMODY: WORKS FOR PLAINTIFFS, YOUR HONOR.
5 THANK YOU.

6 THE COURT: THAT'S OKAY? OKAY.

7 WHAT ABOUT FOR DEFENDANTS?

8 MR. VAN NEST: I THINK WE'LL BE ABLE TO STAFF IT ON
9 THE 18TH, YOUR HONOR. THANK YOU.

10 THE COURT: OKAY. WHY DON'T WE SET, THEN, A FURTHER
11 CMC ON DECEMBER 18TH AT 2:00 O'CLOCK?

12 OKAY. SO OTHERWISE THE SCHEDULE REMAINS AS SET. WE'LL
13 HAVE OUR HEARINGS ON THE VARIOUS MOTIONS ON MARCH 20TH AND
14 MARCH 27TH, AND THEN HAVE OUR PRETRIAL CONFERENCE ON MAY 8TH
15 AND THE -- WE'RE KEEPING OUR TRIAL DATE OF MAY 27TH.

16 I UNDERSTAND THAT THE TRIAL LENGTH IS THE SAME REGARDLESS
17 OF THE SETTLEMENT, SO IT'S STILL 17 DAYS, OR --

18 MS. DERMODY: YES, YOUR HONOR. FROM OUR PERSPECTIVE,
19 YES.

20 THE COURT: OKAY.

21 MR. VAN NEST: I THINK THAT'S RIGHT, YOUR HONOR.

22 THE COURT: OKAY. ALL RIGHT.

23 WHAT ELSE DO WE NEED TO HANDLE TODAY? ANYTHING ELSE?
24 NOTHING ELSE?

25 MR. SAVERI: I THINK, FROM OUR PERSPECTIVE, WE'VE

1 TAKEN CARE OF EVERYTHING.

2 THE COURT: OKAY. ALL RIGHT. GREAT.

3 MR. VAN NEST: NOTHING ELSE, YOUR HONOR.

4 THE COURT: OKAY. LET ME ASK, JUST BECAUSE I WILL BE
5 CURIOUS AND MAY NOT BE ABLE TO WAIT UNTIL DECEMBER THE 11TH,
6 WOULD YOU MIND FILING JUST A SETTLEMENT STATUS REPORT AFTER
7 YOUR -- IS THE NOVEMBER 19TH DATE FOR ALL DEFENDANTS? ARE YOU
8 DOING INDIVIDUAL, INDIVIDUAL MEDIATIONS OR YOU'RE DOING GROUP
9 MEDIATIONS?

10 MR. VAN NEST: IT'S FOR ALL OF US, YOUR HONOR.

11 THE COURT: I SEE.

12 MR. VAN NEST: HOWEVER, WE'LL LET THE MEDIATOR DECIDE
13 HOW HE WANTS TO DIVIDE IT UP.

14 BUT ON THE CHANCE THAT THINGS DRAG ON A DAY OR TWO MORE,
15 I WOULD ASK THAT -- WE CAN FILE SOMETHING BEFORE THE 18TH, BUT
16 I WOULD PUT IT RIGHT UP IN FRONT OF THAT. IF YOU WANT TO DO IT
17 BY THE 11TH OR -- A WEEK AHEAD.

18 THE COURT: WELL, ON THE DECEMBER 11TH DATE YOU'LL
19 HAVE TO FILE A JOINT SUPPLEMENTAL CASE MANAGEMENT STATEMENT
20 ANYWAY TO REPORT ON ANYTHING NEW.

21 MR. VAN NEST: SURE.

22 THE COURT: SO I SUSPECT THAT AT THAT POINT YOU WOULD
23 INCLUDE ANY SETTLEMENT STATUS REPORT.

24 MR. VAN NEST: OF COURSE.

25 THE COURT: BUT I'M BEING PERHAPS PATHOLOGICALLY

1 OPTIMISTIC THAT THERE MIGHT BE SOME INFORMATION THAT YOU'D WANT
2 TO SHARE BEFORE THAT DATE, AND IF YOU DID, I WOULD -- I GUESS
3 IT DOESN'T MATTER. I CAN WAIT UNTIL DECEMBER 11TH. I WAS
4 GOING TO ASK MAYBE IF YOU COULD FILE SOMETHING IN THE INTERIM,
5 MAYBE THE WEEK OF THANKSGIVING, THE FIRST WEEK OF DECEMBER.
6 BUT YOU KNOW WHAT, IT'S OKAY. YOU'LL BE FILING SOMETHING
7 ANYWAY ON DECEMBER 11TH.

8 MR. VAN NEST: WE WILL.

9 THE COURT: SO THAT'S FINE.

10 OKAY. ANYTHING ELSE FOR TODAY?

11 MR. VAN NEST: NOTHING FOR DEFENDANTS, YOUR HONOR.

12 MS. DERMODY: AND YOUR HONOR, IF WE HAVE A SETTLEMENT
13 IN PRINCIPAL, WE'LL LET THE COURT KNOW AS WE HAVE WITH OTHER
14 CASES.

15 THE COURT: OKAY.

16 MS. DERMODY: SO YOU'LL GET AN UPDATE IF IT'S
17 POSSIBLE.

18 THE COURT: OKAY. THANK YOU. AND THANK YOU EVERYONE
19 FOR YOUR PATIENCE.

20 MS. DERMODY: THANK YOU, YOUR HONOR.

21 MR. STONE: THANK YOU, YOUR HONOR.

22 MR. VAN NEST: THANK YOU, YOUR HONOR.

23 (THE PROCEEDINGS WERE CONCLUDED AT 3:47 P.M.)

24

25

1
2
3 CERTIFICATE OF REPORTER
4
5
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14
15 *Lee-Anne Shortridge*
16

17 LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595
18 DATED: OCTOBER 30, 2013
19
20
21
22
23
24
25